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March 21, 2007

Mayor and City Council  
City Hall  
735 Anacapa Street  
Santa Barbara, CA 93101

Re: Appeal of Planning Commission Denial of Project and Grant of Appeal  
Agenda - March 27, 2007, Item No. 18  
Century 21, 3408 & 3412 State Street (MST2004-00704)

To Mayor Blum and the Council:

The Applicants' **TWO-STEP FLIP** maneuver (obtaining approvals as apartments which have lesser parking requirements and other lesser land use restrictions and then attempting a conversion to more restrictive condominiums) was unanimously rejected by the Planning Commission on November 2, 2006. If their **TWO-STEP FLIP** maneuver had been successful, it would have removed affordable housing from the rental market. I urge the City Council to deny this appeal and affirm the unanimous denial by the Planning Commission.

This Project is much too large for this lot. It might be appropriate on a larger lot in a downtown somewhere else, perhaps in parts of Los Angeles, Las Vegas, Florida or Texas. But it is not appropriate for Uptown Santa Barbara. This two-story addition of 4 apartments totally altered the pre-existing building beyond recognition and could be precedent setting if it is approved. The S-D-2 setback of 20 feet for two story buildings was established almost 30 years ago (1979) and most construction along Upper State complied with that setback. The compliance with that setback has given us a better looking and more open State Street. This building clearly violated the S-D-2 setback requirements along the north side of State Street and blocked mountain views. If that were not bad enough, non-compliance with the requirements for condominium development or conversion and a Tentative Subdivision Map added even more reasons why the Project should not be approved. Also, there were major failures to comply with the Upper State Street Design Guidelines or to comply with major elements of the "approved plans." In any event, the facts do not support the issuance of a zoning modification.

It is difficult to write a letter when I have not seen the reasons for Applicants' appeal despite the fact that the Applicants' representative said that they would submit them. Moreover, I do not have a Council Agenda Report for this Appeal which has not yet been given to me despite my repeated requests. This letter tries to anticipate and is not as focused as I would have liked because I do not have the information needed to narrow my response. Therefore, I have to anticipate and include much in the record which is not the method that I would have preferred.

Some of the arguments justifying this Appeal are set forth in this letter and my previous letters and their attachments (which I am told will be attached to the Council Agenda Report). This letter continues the same Exhibit and other numbering systems used in my prior letters and attachments. For the record, I am incorporating all of my previous comments and submittals.

## INTRODUCTION

The impact of this Project transcends the actual Project at 3408 and 3412 State Street and would establish many bad precedents for (i) Outer State Street, (ii) how the City treats projects that violate the law and (iii) the City's concern for the preservation of its rental housing stock. It is my belief that this Project would never have been approved if the initial application had been for a condominium conversion rather than for apartments. This is a bad Project that should never have been approved for apartments. And there are even more reasons that it should not be approved for conversion to condominiums. This Project has so many defects and problems that it should be summarily denied.

Neither the facts nor law support the granting of a modification of the zoning laws. (see Sections 5 and 7). Even if a modification were granted, the law would not approve a Condominium Conversion permit or a Tentative Subdivision Map. (Sections 7, 8, 9 and 10) These knowledgeable Applicants should not be rewarded by permitting them to gain an undeserved windfall by obtaining a condominium conversion permit.

The Applicants and their development team are all experienced real estate and/or land development professionals. They comprise at least two experienced architects (Donald Pedersen and Richard Johnson - see attached Exhibit 8, pages 1 & 2), two experienced Realtors (Robert Hart and Deborah Hart - see attached Exhibit 8, pages 3-7) and an experienced planning expert. It should also be noted that the plans for this building contained a disclaimer that stated "This approval is for the site plan and project submitted and does NOT waive any requirement of other laws or ordinances of the City of Santa Barbara.

There are many other reasons that this Project should be denied. This Project requires a Development review and approval, but none was given. (see Sections 5 and 6) The Applicants for this Project thought that they found a clever way to avoid environmental review by obtaining an approval without an environmental analysis and then seeking an approval that circumvented the environmental laws because of an exception for an existing building. To permit such an evasion would make a mockery of the environmental laws. (see Section 11) This Project does not even come close to complying with the Upper State Street Design Guidelines because it neither respects nor complies with the setbacks, size, bulk and scale of existing, contiguous (7-11 convenience store and Your Choice Thai restaurant) and adjacent buildings. (see Section 12) Public Records were destroyed although I had outstanding request pursuant to the California Public Records Act. The unavailability of these records has significantly hindered my investigation for this appeal. (see Section 13) This Project is in a parking deficit area and the construction of this Project reduced the number of available parking spaces on the lot where this

Project was constructed. Moreover, at least 22 parking spaces are required, not the 18 spaces that are referred to in the Staff Report. This Project with inadequate parking should not be approved. (see Section 14) Approval of this Project would be detrimental to the City's Rental Housing Stock and it is hard to argue that Santa Barbara needs more market rate housing. Approval of this condominium conversion does not increase the housing stock. It merely increases the number of expensive condominiums (unsold) and reduces the amount of the rental housing stock. (see Section 15) This Project should not be approved because it does not have adequate landscaping, green open space or comply with the parking design requirements in the parking Code. (see Section 16) The constructed Project does not conform to the plans and there has been illegal paving and parking in the southwest corner in the front of the trash enclosure. This paving was not removed until sometime earlier this month, more than one year after issuance of the Certificate of Occupancy. The landscaping plan is not consistent with the landscape plans that were approved by the Architectural Board of Review ("ABR"). The actual building space does not contain open spaces above the second floor corridor as shown on the plans approved by the ABR. There are also other violations. (see Section 17)

Good planning has brought about some great things on Outer State for more than three decades. In the late 1970s and early 1980s, the unsightly pole signs were required to be removed upon the completion of a fair and reasonable amortization period. The S-D-2 Overlay Zone also has done some great things for Outer State Street. Over the past 27 years since its adoption, we have seen the gradual expansion of setbacks. Unfortunately, major problems have been associated where exceptions (modifications) to the setback and/or parking requirements were made such as:

1. Surgical Center & Trader Joe's on De La Vina,
2. Commercial center on the southwest corner of State Street & La Cumbre Road which has been occupied by at least four restaurants (Koo-Koo-Roo, a French restaurant and Bakery, Submarine sandwiches, Sushi Teri) that have closed because of inadequate parking. It is now occupied primarily by Ameritrade, Peet's Coffee and Tremblay Financial, and
3. Fidelity Building & condos at southeast corner State Street & Hope Avenue.

If this Project and Fidelity are examples of mixed use in Outer State, I do not want to see any more mixed use projects in Uptown. I urge you not to create another bad precedent by approving this Project.

It is my strong belief that Applicants should not be rewarded for violating the law or concealing facts by using the **TWO-STEP FLIP**.

## 1. SUMMARY OF SPECIFIC REASONS AND LAWS

The bad project which was constructed:

1. Violates the Municipal Zoning law [inadequate (1) setback and (2) parking],
2. Does not comply with the Upper State Street Design Guidelines, and
3. Does not comply with the approved "Final Plans" [We will never know if those Final Plans were consistent with the approvals by the Architectural Board of Review (ABR) because

the ABR records were destroyed in violation of the Public Records Act and the City Resolution concerning Record Maintenance.

The initial approval by the Staff Hearing Officer (SHO) that was unanimously reversed by the Planning Commission would have:

1. Violated the Municipal Zoning law [inadequate (1) setback and (2) parking],
2. Violated the Upper State Street Design Guidelines,
3. Failed to comply with the approved Final Plans - There has not been compliance with the Landscape Plan that was approved by the ABR. (see Exhibit 10) Moreover, the approved Landscape Plan would preclude the outside private storage proposed by the Applicants.

We will never know if those Final Plans were consistent with the approvals by the Architectural Board of Review (ABR) because the ABR records were destroyed in violation of the Public Records Act and the City Resolution concerning Record Maintenance.

4. Violated S.B.M.C. Chapter 27.13 (Residential Condominium Development)
  - A. S.B.M.C. §27.13.050 (Requirements for Condominium Projects) - inadequate allocation of parking spaces, no restrictions regarding storage of recreation vehicles, waiver of right to protest formation of public utility districts.

- B. S.B.M.C. §27.13.060 (Physical Standards for Condominiums)
    1. Subsection 1 - The parking provided is not in accordance with S.B.M.C. §28.90.100.
    2. Subsection 2 - No private enclosed storage space is provided for any unit, much less the required 300 cubic feet per unit.

5. Violated S.B.M.C. Chapter 27.07 (Tentative Maps) A condominium conversion of this size requires the approval of a Tentative Subdivision Map. After the Tentative Subdivision Map is approved, the developer can obtain a Final Subdivision Map and approval from the State Department of Real Estate (DRE). However, the proposed project should not have been approved for numerous reasons:

- A. S.B.M.C. §27.07.040 (Non-Compliance) The Tentative Map, if one existed, should have shown non-compliance with the Municipal Code and General Plan. If it showed non-compliance with the Code (Zoning or General Plan), neither the Tentative Map nor condominium conversion could be approved. "Any failure to contain such a statement would indicate that there was "full compliance with the provisions of this ordinance is intended and NO VARIANCE or WAIVER of any provisions of the Municipal Code, the General Plan or specific plans is contemplated as a condition of approval." However, the proposed project needs may waivers to be approved.

- B. S.B.M.C. §27.07.100 (Requirements for Approval)
    1. Subsection A (COMPLIANCE WITH STATE AND LOCAL REQUIREMENTS AND CONDITIONS) The proposed project should have been be denied because of the failure to meet or comply with any requirement or condition imposed by the Subdivision Map Act or the Santa Barbara Municipal Code [(Zoning (setback & density, condominium development, condominium conversion)

2. Subsection B (CONSISTENCY WITH GENERAL AND SPECIFIC



PLANS) The proposed project should have been denied because it is not consistent with the General Plan or a specific plan adopted thereunder (exceeds maximum levels permitted in the Noise Element of the General Plan

3. Subsection C (DENIAL ON SPECIFIC FINDING; EXCEPTIONS)

Approval or recommendation thereof shall be denied to any map by the Advisory Agency and, in the event of an appeal, by the Appeal Board, if said body finds:

a. The proposed map is not consistent with applicable General and specific plans.

b. The design or improvement of the proposed development is not consistent with applicable general and specific plans.

c. The site is not physically suitable for the type of development.

d. The site is not physically suitable for the proposed density of development.

B. S.B.M.C. §27.13.060 (Physical Standards for Condominiums)

1. Subsection 1 - The parking provided is not in accordance with S.B.M.C. §28.90.100.

2. Subsection 2 - No private enclosed storage space is provided for any unit, much less the required

6. Violated S.B.M.C. Chapter 28.88 (Conversion of Dwelling Units to Condominiums)

A. S.B.M.C. §28.88.030 (Requirements and Procedures)

1. Subsection C - Not in compliance with Zoning Ordinance and the goals and Policies of the General Plan,

2. Subsection E - After a building permit has been issued, a building may not be converted unless a certificate of occupancy was issued more than 5 years prior to the date that the owner files application for conversion, unless the building satisfies the requirements for new condominium construction.

B. S.B.M.C. §28.88.040 (Physical Standards for Condominium Conversions)

The proposed project did not conform to the Santa Barbara Municipal Code in effect at the time of approval and specific subsections in this Section: :

1. Subsection E (PRIVATE STORAGE SPACE) Each unit shall have at least 200 cubic feet of enclosed weatherproofed and lockable private storage space, in addition to guest, linen, pantry, and clothes closets customarily provided. Such space shall be for the sole use of the unit owner. Such space shall be accessible from the garage or parking area for the units it serves. However, such space cannot be created without violation of the ABR approved plan for landscaping.

2. Subsection J (PARKING STANDARDS) The off-street parking requirements for a conversion project shall be two (2) parking spaces per unit for units containing two or more bedrooms. There is no provision for granting a zoning modification for these requirements and the reasons justifying an exception do not exist.

There are also numerous questions about compliance with the plans. On December 28, 2005, the Building Division issued a Certificate of Occupancy for this building despite the fact that the

landscaping had not been installed as required by the Landscape Plan that had been approved by the ABR and the "open areas" above the second floor corridor on the "Approved Plans" had been covered.

The Noise Study for this project raises significant questions. The Applicants' sound expert determined that the decibel level on the patios are 62.5 which exceeds the maximum level of 60 decibels. However, the State Street Lofts is in a less noisy location (it is farther from the traffic signals and bus stop). The Noise Study for the State Street Lofts project found that the noise level was approximately 70 dBa. I personally measured the noise levels from the balcony and found that the ambient noise level at approximately 2:00 pm was approximately 70 dBa. However, it rose to the mid 80s when a bus or truck came by and there were even some louder levels when vehicles braked for the signal or accelerated after stopping.

This is a bad Project that never should have been approved for the two-story addition of 4 apartments that totally altered the pre-existing building and clearly violated the SD-2 setback along the north side of State Street and blocked mountain views. If that were not bad enough, the condominium conversion process added even more reasons why the Project should not be approved, some of which are set forth in this Supplement to my appeal and its attachments. There are a multitude of reasons why the decisions of the Staff Hearing Officer should be reversed and this appeal should be granted. I urge you to grant this appeal.

## 2. INTRODUCTION

The Applicants started to violate the zoning law on September 9, 2004 when they started construction of an addition of four second story apartments which encroached into the required front yard in the SD-2 Overlay Zone. (see Chronology that is marked Exhibit 1) and they started the two step approach by filing a Condominium Conversion Application three weeks later. I think that we all agree that it is wrong to violate the zoning laws. I think that we all agree that the Community Development Department should do more to enforce zoning violations. I would hope that we all agree that lawbreakers should not be rewarded for violating the law. However, the granting of the modification and other approvals that have been appealed would reward lawbreakers by making discretionary decisions which gave them a gift to which they were not entitled, namely the right to have an unjust windfall profit from being allowed to sell condominiums.

On April 11, 2006, Danny Kato sent me two e-mails which responded to my two e-mails about the zoning violation at Century 21 wherein he states that "Our previous conclusion that the Century 21 building conforms to zoning was incorrect. A minor portion of the building that (sic) encroaches into the front yard setback, and the plans should have been revised or a Modification approved prior to building permit issuance." (see Appeal Exhibit E to Appeal, page 1 attached as Exhibit A to the Staff Report). Mr. Kato sent a subsequent e-mail that stated "I misread the City Attorney's direction regarding the enforcement of these encroachments, and therefore wrote you incorrectly below. If the applicant does not pursue any discretionary approvals, the City will not

enforce on these encroachments, as they have approved building permits. If the applicant does not pursue any discretionary approvals, Planning Staff will process the as-built Modifications or work with the applicant to redesign the project." In order to be approved, the requested modification, condominium conversion permit and tentative subdivision map need discretionary approvals. I believe that neither the law nor the facts support such approvals. The Planning Commission should grant the appeal and deny the three requested approvals.

This Project is a Mediterranean monster, which has been likened to a hovercraft and is not appropriate for the lot or uptown State Street. It might work on a larger lot in an urban area. It is well described in Santa Barbara News-Press article on February 4, 2006 which described the existing building as an addition of condominiums that was:

"Once humble, small, one-story building that few would have noticed, the office is now a Mediterranean structure that invites a double take." (see Exhibit 2)

The pictures in this article clearly show how the mountain views were blocked and how the finished Project was more than a mere reconstruction of a non-conforming structure. It is the first and only two-story Project that violates the setback requirements and blocks mountain views on the north side of upper State Street since the adoption of the SD-2 Overlay Zone. Moreover, it violates Mahan's Rule that setbacks should be proportional to the size of the buildings. However, there are not even any setbacks for the portions of the structure next to the sidewalk along State Street. The creators of this bad Project, which could establish a bad precedent for Uptown, should not be rewarded and be given more by approving a condominium conversion.

Unfortunately, I have not been able to access the ABR file which would have contained pictures of the pre-existing conditions and views because the ABR file was destroyed on February 17, 2006 despite the fact that I had filed a formal Public Records Act request for it on January 13, 2006 (see Exhibit 3). Fortunately, the file had a picture of the south facade and southerly portion of the easterly facade of the pre-existing building and planting. (Exhibit 4)

### 3. STATEMENT OF FACTS

The earliest building that I have found for this site was a Minnie Pearl Chicken Restaurant with 2,395 sq. ft. that was constructed in 1969. (Exhibit 5) The Fashion Barn added an addition of 980 sq. ft. (for a total of 3,375 sq. ft.) in 1977 which was substantially the same as the building that existed prior to the massive remodel and addition of the apartments. (Exhibit 6). This one-story addition, which encroached into the setback, beat the clock because it was constructed two years before the SD-2 Overlay Zone was adopted. An application for the four apartments was approved on September 9, 2006. Three weeks later (September 30), the two step switch formally started when an application for a condominium conversion was filed.

The application, dated September 30, 2004, described the building as an addition of 3,822 sq. ft. and a deck with 789 sq. ft. with 3,762 sq. ft. of commercial space. Architectural Board of

Review (ABR) - concept review of an addition described as a "proposal to construct a 3,702 square feet second story addition to an existing 3,762 square foot commercial building. [I cannot account for creation of 387 square feet above the approved 3,375 sq. ft. other than to guess that the greater number for existing commercial space was used so that the residential addition would not more than 50 % of the total Project.]

#### 4. CONTEXT

This Project would not be so bad if it were on a larger lot outside of Uptown. It is another example of trying to stuff too much into too little. Moreover, it is inconsistent with the adjacent properties on the block. The one-story 7-11 convenience store (to immediate west) is significantly setback from State Street. The one-story Thai restaurant "Second Choice" (to the immediate east) is also setback and is much smaller in size, bulk and scale. The Century 21 building is highly visible and sticks out like a sore thumb. I do not understand why somebody would construct this massive building, that is out of scale for anything in the area, and violates the zoning law in such a visible place.

#### 5. ZONING REQUIREMENTS

Santa Barbara Municipal Code Section 28.45.008 contains limitations in the SD-2 and states, in most relevant part, as follows:

"A. LOCATION. The S-D-2 zone is applied to the "Upper State Street Area" which is defined as the area bounded by Alamar Avenue, U.S. Highway 101, Foothill Road and State Highway 154.

B. LEGISLATIVE INTENT. It is the purpose of the S-D-2 Zone to impose certain traffic related restrictions greater than those provided in the basic zones in which lots in the "Upper State Street Area" are classified. State Street is the only major east-west surface street serving the Upper State Street Area and it is one of the most heavily traveled streets in the City. In order to prevent the volumes of traffic on State Street from exceeding acceptable limits and to limit increased air pollution, due to vehicular traffic, it is necessary to impose the traffic related restrictions contained in this section on new developments in the area. In order to ensure the appropriateness of developments in said area, and the mitigation of traffic impacts where possible, it is necessary that development plans for said developments be reviewed.

C. DEVELOPMENT POTENTIAL. Notwithstanding any provision of law to the contrary, no application for a land use permit for a nonresidential construction project will be accepted or approved on or after December 6, 1989 unless the project complies with the provisions outlined in General Provisions, Development Plan Approval, Section 28.87.300.

D. STANDARDS. The following standards shall apply to all projects in the S-D-2 Zone:

1. Parking Requirements. Off-street parking shall be provided as required in Chapter 28.90 of this Title.

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4. Front Yard Setbacks. There shall be a front yard of not less than ten (10) feet for one story buildings not exceeding fifteen (15) feet in height and not less than twenty (20) feet for two and three story buildings not exceeding forty-five (45) feet in height."

On February 24, 2006, I initially questioned why a front yard setback of 20 feet was not required for this Project under the SD-2 zoning (see Exhibit A to Appeal). The Community Development Department initially asserted that the Project complied with the zoning and a modification was not needed. (see Exhibit B to Appeal). This assertion was incorrect and I supplied specifics to the City. (see Exhibit C to Appeal). The City eventually admitted that its initial assertion was incorrect and a 20 foot front yard setback is required for this Project. (see Exhibit E to Appeal) Since there is agreement that a modification is needed, there is no need to argue why non- conforming exceptions do not apply to this Project.

Prior to my raising of the requirement of a front yard setback of 20 feet, nobody in the City raised this requirement despite numerous hearings before the Architectural Board of Review and at least three major staff reviews (PRT and DART).

#### 6. NO DEVELOPMENT PLAN REVIEW

Santa Barbara Municipal Code Section 28.45.007.C requires development review and approval pursuant to Santa Barbara Municipal Code Section 28.87.300. However, no such approval, much less review, was given for this Project. I request that a project of this size, impact and precedent setting nature (exceeding 7,000 sq. ft. on State Street which is the first structure constructed on the north side of State Street that blocks mountain views that does not have the required setback since the adoption of the SD-2 Overlay Zone) should have had a full review. .

#### 7. FACTS DO NOT SUPPORT GRANTING OF A ZONING MODIFICATION

The granting of modifications of the Zoning Ordinance is a discretionary act and can only be granted in certain conditions. The requirements for a modification of the setback requirements require the following findings:

1. The modification is consistent with the purposes of this Title,
2. The modification is consistent with the intent of this Title, AND
3. The modification is necessary to:
  - A. secure an appropriate improvement on a lot,
  - B. prevent unreasonable hardship
  - C. promote uniformity of improvement, or

D. is necessary to construct a housing development which is affordable to very low-, low-, moderate- or middle-income households.

The facts do not support the making of the first two required findings nor do they support making any of the other findings under the third grouping. It was both the purpose and intent of the SD-2 Overlay Zone to limit development along upper State Street. This oversized building, which is not adequately setback and blocks mountain views, is not an appropriate improvement for the site. There is no unreasonable hardship that requires the granting of a modification. Any hardship involved in this Project was self induced by people that should have known better (an experienced architect and at least two knowledgeable real estate brokers). This development does not promote uniformity of improvement. Instead, it establishes a bad precedent for upper State Street, especially in light of the fact that the building to the west is one story and is significantly setback and the building to the east is one story and is also setback.

Santa Barbara Municipal Code Section 28.92.110 grants the authorization for modifications of Zoning Ordinance and establishes specific conditions which must be met and states as follows:

“Modifications may be granted by the Planning Commission or Staff Hearing Officer as follows:

A. BY THE PLANNING COMMISSION. The Planning Commission may permit the following:

1. A modification or waiver of the parking or loading requirements where, in the particular instance, the modification will not be inconsistent with the purposes and intent of this Title and will not cause an increase in the demand for parking space or loading space in the immediate area.
2. A modification of yard, lot and floor area regulations where the modification is consistent with the purposes and intent of this Title, and is necessary to (i) secure an appropriate improvement on a lot, (ii) prevent unreasonable hardship, (iii) promote uniformity of improvement, or (iv) the modification is necessary to construct a housing development which is affordable to very low-, low-, moderate- or middle-income households.

B. BY THE STAFF HEARING OFFICER. The Staff Hearing Officer may permit modifications in accordance with subsections 1., 2., 3., 4., and 5. above, if the Staff Hearing Officer finds that:

1. The requested modification is not part of the approval of a tentative subdivision map, conditional use permit, development plan, site plan, plot plan, or any other matter which requires approval of the Planning Commission; and
2. If granted, the modification would not significantly affect persons or property owners other than those entitled to notice.”

Moreover, the Staff Hearing Officer did not have authority to approve a modification in this case because this Project requires a tentative map and a development plan approval.

## 8. CONDOMINIUM CONVERSION IS NOT PERMITTED

S. B. M. C. Section 28.88.030.C (Requirements and Procedures) expressly prevents this condominium conversion. It states:

No existing building containing a dwelling unit shall be approved for conversion to a condominium or hotel unless it meets the standards set forth in the following requirements:

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**C. All buildings sought to be converted are, on the date of conversion, in all respects in compliance with the Zoning Ordinance and the goals and policies of the General Plan, or legally nonconforming therewith.**  
(emphasis added)

Moreover, this building is barred from conversion unless five years have elapsed after the issuance of a certificate of occupancy. S. B. M. C. Section 28.88.030.D states:

“Once a building permit has been issued, a building may not be converted unless the certificate of occupancy for the building was issued more than five (5) years prior to the date the owner files with the City an application for the approval of a tentative condominium map or conversion to a hotel or similar use, unless the building satisfies the City's requirements for new condominium construction.”

Moreover, I do not believe that the facts or law support the findings necessary to approve the condominium conversion as set forth in Section IV.D. of the Recommendations in the Staff Report.

## 9. THIS PROJECT DOES NOT COMPLY WITH NOISE ELEMENT OR ITS GUIDELINES

The Staff Report (Section III.D) recognizes that the proposed Condominium Conversion does not comply with the noise requirements set forth in the General Plan and the Noise Element Compatibility Guidelines, but does not attach a copy of the Applicants' Noise Report which trashes the Project. For your convenience, I have attached a copy of that Noise Report which is attached as Exhibit 7. It states, in most relevant part, that:

“The real estate office is on the ground floor and the 4 residential units are on the second floor. Three of the units have open decks overlooking State Street. The primary exterior noise source at these units is the traffic on State Street. The fourth unit deck is on the side of the building away from State Street and is not impacted by the street traffic.

The primary community noise is traffic noise from State Street. Compounding the noise problem are the bus stops directly in front and across the street. Additional noise is generated by the stop and go of traffic at the street signal just west of the building.

The exterior 62.5 CNEL is above the 60 CNEL targeted limit. Sound levels for some sound barrier heights at the exterior railings were calculated. The results are in Table 1. A solid barrier (glass or Lexan) 4-foot high may reduce the deck sound levels below 60 CNEL. The reduction will not be as great as Tabulated because of reflections off the ceiling and back wall. Also, any sound barrier must be airtight at the base and junctions with the building walls to achieve optimum noise reduction. This presents a problem of drainage for the exterior decks.

In conclusion, the significant noise source at the units is traffic noise from State Street. Based on field measurements and calculations, the future interior noise levels will be well below 45 CNEL. The units meet the requirements of the Administrative Code. **Although exterior deck noise levels facing State Street are above 60 CNEL, any noise barriers to reduce the level below 60 CNEL would reduce the natural air circulation on the deck and create a drainage problem.** [emphasis added]

Excusing Applicants from compliance by merely requiring them to obtain approval of noise reduction construction from the ABR at some later date is inappropriate and inconsistent with the observations in the Applicants' own Noise Report. What guarantee is there that the ABR would grant such approval, especially when the Applicants' own Noise Report states that such noise protection would reduce the natural air circulation and cause drainage problems.

It is my understanding that the General Plan noise element limits are intended to keep people from living in unhealthy conditions. It should make no difference if the noisy space is within the "required open yard area" or other space to be used by the occupants. If it is a violation of the health and safety standards of the City, why let it happen?

At least one member of the ABR has suggested that the Project that was constructed is not consistent with the ABR approval. There are some very questionable things related to the earlier ABR approval. This is even more significant in light of the destruction of the ABR records in violation of both the Public Records Act and the City's Record Retention resolution. Finally the Planning Commission does not have the authority to delegate its authority to make findings on compliance with the Noise Element and its guidelines to another body (ABR).

I think that I know why the noise issues were not part of the hearing before the Staff Hearing Officer, but that is not entirely relevant. It also raises two other questions. Is the noise element the reason that this Project was built as an apartment with the belief the Applicants could get a waiver as a conversion project but could not obtain an initial approval as a condominium project? Is this one big illegal project intended to avoid the spirit and intent of City standards just to do a favor for someone? ) The many illegal aspects of this Project raise the reasonable and quite serious concern that favoritism has been and is involved in the decision-making process.



10. TENTATIVE SUBDIVISION MAP DOES NOT COMPLY WITH  
ALL ELEMENTS OF THE GENERAL PLAN OR ZONING

In order to approve a Tentative Subdivision Map, it must be found that the project on the Tentative Map complies with both all elements of the General Plan and the Zoning. However, this Project does not comply with the General Plan or zoning. Hence, it cannot be approved.

11. THIS PROJECT MAKES A MOCKERY OF THE ENVIRONMENTAL LAWS

This Project makes a mockery of the environmental laws. It is my strong belief that this Project would never have been approved if the Applicants had come clean, and initially applied for a condominium conversion. This Project was approved as apartments with little scrutiny and subsequently constructed. It is absurd to suggest that now it is exempt from environmental analysis under CEQA Guideline 15301 that exempts existing facilities. Using a two step approach is not appropriate to undermine a fair environmental analysis and the planning process. CEQA Guideline 15301 was adopted as a tool to circumvent environmental analysis and was not intended for this type of conversion, especially when the Applicants attempted to evade the environmental laws and other reviews with a two-step approach that did not disclose their actual attempt to circumvent the law.

12. NON-COMPLIANCE WITH UPPER STATE AREA DESIGN GUIDELINES

The proposed Project does not comply with the Upper State Street Design Guidelines. The most obvious non-compliances are set forth in the following Guidelines:

**“Architectural Style:**

All styles of architecture must be compatible with their respective neighborhood and must also enhance Santa Barbara's distinctive architecture by designs which are in the context of the ambiance and charm which exemplifies Santa Barbara.

**Site Planning:**

The planning and design of the site should take into account that parking is preferred behind the building rather than fronting on the street. Ease and safety of ingress and egress should be given careful consideration. **Buildings should have setbacks from the street in scale with their height and mass, and respecting the setbacks of adjacent buildings.** [emphasis added] See Private Property Landscaping below.

**Building Height:**

**Building heights should be in scale and proportion with their setbacks and should be compatible with adjacent buildings.**

Buildings must have human scale.” [emphasis added]

As I stated earlier, this building does not enhance the charm (smaller scale and setbacks) of most recent construction along Uptown State Street. This building does not have setbacks in scale to its height and mass and does not respect the setbacks of adjacent buildings (7-11 convenience store and “Your Choice” Thai restaurant). Moreover, the building height is not compatible with the adjacent buildings on the block. And the size, bulk, scale and proportions of the Project are out of scale for the area.

### 13. DESTRUCTION OF PUBLIC RECORDS

On January 13, 2006, I made a public records request for files related to 3408 and 3412 State Street (Exhibit 3). However, the ABR records for the apartment Project were destroyed on February 16, 2006. The Staff Report (Exhibit F) contains electronic minutes of the ABR meetings when there was consideration of this marginal Project. However, the actual plans, submittals, audio or video recordings and other documents related to those approvals were destroyed. This destruction has greatly hindered my analysis of what happened with this Project.

Transparency in government is a very important element of good government. The timing of the destruction of these records, for which a specific written request had been made while a citizen was investigating several specific and dubious projects, is highly suspicious and raises many unfortunate questions.

### 14. THE PARKING FOR THIS PROJECT IS NOT ADEQUATE

The Upper State Street is a parking deficit area and exceptions to the minimum parking requirements should not be made. To the contrary, I believe that greater parking requirements should be imposed in this parking deficit area. In addition, I do not believe that the parking requirements were correctly calculated. The requirement for the commercial unit would be 14 parking spaces (3,436 sq. ft. divided by 250 sq. ft. and any fraction thereof). S.B.M.C. Section 28.90.100.G. requires 8 parking spaces for the residential use (4 condominiums times 2 spaces) for a total (minimum) of 22 parking spaces, not the 18 that Staff states is the required amount.

It might be argued that the parking requirements are subject to a 50% reduction pursuant to S. B. M. C. Section 28.90.H.1.a, but there is no entitlement to such a reduction because the residential uses (especially when the decks are included) occupy more than 50% of the development.

This project does not qualify for a reduction because the residential space contains more than 50% of the building. This percentage is even larger when the square footage for the second floor corridor, the elevator (both floors), the elevator equipment room, private storage areas and both stairways are included because these areas are needed exclusively for residential uses.

It also should be emphasized that the construction of this addition reduced the number of parking spaces on the lots where Century 21 is located. For reasons unknown to me, the existing parking set-up is dank and dark and is not very welcoming to the extent that people have been observed parking on the adjacent 7-11 or Your Choice properties and then walking into Century 21. This overflow might work now, but what happens when the properties where 7-11 and Your Choice properties are developed? Good planning requires that the parking needs for the future be addressed adequately.

#### 15. APPROVAL OF A CONDOMINIUM CONVERSION WOULD DAMAGE SANTA BARBARA'S THE RENTAL HOUSING STOCK

It is important to protect Santa Barbara's rental housing stock. A good argument can be made that Santa Barbara has enough market rate housing and that only affordable housing is needed. Unfortunately, not many apartments have been built in recent years. Therefore, it is especially important that we protect our limited housing stock.

Approval of this condominium conversion does not increase the housing stock. It merely increases the number of expensive condominiums (unsold) and reduces the amount of the rental housing stock. Approval of this Project would set a bad example for the destruction of our rental housing stock and should be denied.

#### 16. INADEQUATE LANDSCAPING AND GREEN OPEN SPACE AND NON-COMPLIANCE WITH THE DESIGN REQUIREMENT IN THE PARKING CODE

There is a notation in the ABR digital notes for January 6, 2003 that states "A modification is required for the 10 percent open space." What happened to that requirement for 10 percent open-space? I do not believe that such open-space exists. Paved parking spaces and driveways should not be counted as open-space. Moreover, the existing parking for this Project does not comply with the landscaping or design requirements contained in S. B. M. C. Chapter 28.90.

The pre-existing Century 21 building was relatively soft and was setback with a border of green landscaping instead of present higher wall that is both cold and harsh to pedestrians. However, the present design is built right to the sidewalk without the previous separation of landscaping. The landscaping does not appear to meet the City requirements and appears to be inadequate.

#### 17. THE CONSTRUCTED PROJECT DOES NOT CONFORM TO THE PLANS

AND THERE HAS BEEN ILLEGAL PARKING IN THE SOUTHWEST CORNER  
IN THE FRONT OF THE TRASH ENCLOSURE

The Project that has been constructed does not comply with the approved plans. A glaring violation is in front of the trash enclosure which has been paved, despite the requirement in the plans that the area contain landscaping. The plans indicate that a curb was to run on the southerly side of Parking Space 19 (southwest corner) and then curve into a straight line which finally curves into the northerly wall of the trash enclosure. The plans indicate another curb would start from the southerly wall of the trash enclosure and curve into a straight line that would terminate at the sidewalk. The plans indicate that the area between the trash enclosure and the sidewalk would be landscaped, but it has been paved over and vehicles park in that paved area which is a separate violation of the required setback area. The chimneys do not have caps as required by the plans. The round circular columns, which support the hovercraft over the parking are so massive that they could be used in a multi-story building. Similarly, the decorative columns in front of the Project are also more massive than needed and appear larger than on the plans. A respected architect advised me that the proportions have been altered from the approved plans.

In summary, the Project does not comply with the plans, but I will leave it to the professionals to further evaluate the noncompliance.

18. THERE WAS NO JUSTIFIABLE RELIANCE BY THE APPLICANTS

There was no justifiable reliance on the Applicants in this matter. If anything, the Applicants took advantage of a very considerate City staff. Estoppel is a disfavored defense against governmental entities. One Court wrote:

“The facts upon which such an estoppel must rest go beyond the ordinary principles of estoppel and each case must be examined carefully and rigidly to be sure that a precedent is not established through which, by favoritism or otherwise, the public interest may be mulcted or public policy defeated.” City of Imperial Beach v. Algert (1962) 200 Cal.App.2d 48, 19 Cal.Rptr. 144

Subsequent decisions such as Pettit v City of Fresno, Smith v. County of Santa Barbara and numerous others have restricted the application of estoppel against governmental entities. And the Applicants level of knowledge and that of their development team and the disclaimer on the plans make it very difficult to argue good faith or justifiable reliance.

CONCLUSION

I have lived in the Upper State Street area for almost three decades and have a very good knowledge of this area. I hear many comments about developments in this area and I have heard

City Council  
Century 21, 3408 & 3412 State Street (MST2004-00704)  
March 21, 2007  
Page 17

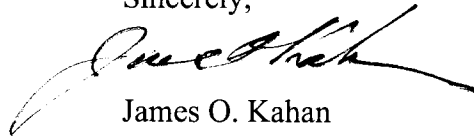
many negative comments about this highly visible, in-your-face development which (i) is too large for the lot, (ii) is not adequately setback and (iii) blocks mountain views. In fact, I have rarely heard anything positive about the Project from my neighbors except for one or two comments that it is a pretty building that should have been built somewhere else. This discretionary Project has something for almost everybody who would like to see it denied.

I respectfully request that all approvals related to this Project be denied and the appeal be denied. There have been too many exceptions and questions relating to this Project to grant any type of approval. There is nothing in the law that requires granting these discretionary approvals. To the contrary, the law prohibits granting these approvals. The many illegal aspects of this Project raise the reasonable and quite serious concern that favoritism is involved in the decision-making process.

The Planning Commission gave this project a very complete review as shown in the attached Exhibits 11, 12 and 13. The thoughtful decision of the Planning Commission should be affirmed and this project should be denied.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "James O. Kahan", written over a horizontal line.

James O. Kahan

## EXHIBIT LIST

- Exhibit 1. Updated Chronology
- Exhibit 2. News-Press Article, February 4, 2006
- Exhibit 3. Public Records Request, January 13, 2006
- Exhibit 4. South facade and southerly portion of east facade with Century 21 sign
- Exhibit 5. Drawing of Minnie Pearl's Chicken Restaurant - 1969
- Exhibit 6. Proposed addition for Fashion Barn
- Exhibit 7. Noise Report, January 6, 2006
- Exhibit 8. Cover Sheet of Plans for project and Disclaimer
- Exhibit 9. News-Press Article, February 4, 2006
- Exhibit 10. Landscape Plan approved by ABR
- Exhibit 11. Reporter's Transcript of Planning Commission Hearing on November 2, 2007
- Exhibit 12. News-Press article, November 4, 2006
- Exhibit 13. Independent article, November 9, 2006
- Exhibit 14. Kahan protest letter, February 13, 2007

## UPDATED CHRONOLOGY -3408 & 3412 STATE STREET

1969	Minnie Pearl's Chicken Restaurant was constructed - 2,395 sq. ft
1977	Fashion Barn addition (980 sq. ft. for a total of 3,375 sq. ft.)
March 28, 1979	SD-2 Zoning Ordinance adopted (Ordinance No. 3989)
March 5, 1985	Complaint about sign
April 22, 1985	Sign approved for Fashion Barn
November 10, 1988	Robert and Carmen Bree purchase 3412 State Street for an estimated \$950,000 [Documentary Transfer Tax \$1045.00 (\$1.10 per \$1,000)]
January 26, 1989	Sign application for "Century 21 BOB BREE Realty, Inc."
January 17, 1996	Robert and Deborah Hart purchase 3412 State Street for an estimated \$1,195,000 (Documentary Transfer Tax \$320.50 plus reduction of Trust deed for \$840,380)
December 18, 2002	MASTER APPLICATION FOR ADDITION OF FOUR (4) APARTMENTS WITH: <ol style="list-style-type: none"><li>1. An addition of 3,702 sq. feet, a deck of 842 sq. ft. and a complete remodel of first story</li><li>2. A construction valuation of \$550,000</li></ol>
January 6, 2003	Architectural Board of Review (ABR) - concept review of an addition described as a "proposal to construct a 3,702 square foot second story addition to an existing 3,762 square foot commercial building. [I cannot account for creation of 387 square feet above approved 3,375 sq. ft. of commercial space except there might have been an attempt to show that the residential addition was not more than 50 % of the total project. ] *** A modification is required for the 10 percent open space."
January 21	ABR - preliminary approval with indefinite continuance
February 12, 2004	ABR - resubmittal received (another re-submittal on February 17)
March 1	ABR - In-progress review with final approval with contingencies
April 12	ABR - final approval of details
May 7	ABR - Jaime Limon spoke to owner about some additional requirements
September 7	Public Works assigns addresses to future apartments as 3408 A, B, C & D State Street

September 9	<b>BUILDING PERMIT ISSUED</b>
September 30	<b>CONDOMINIUM CONVERSION APPLICATION</b> for addition with 3,822 square feet
November 11	Pre-Application Review Team (PRT) comments with meeting scheduled for November 16, 2004
June 30, 2005	Submittal for Development Team Application Review (DART)
July 29,	DART comments
December 28	<b>CERTIFICATE OF OCCUPANCY ISSUED</b>
January 13, 2006	Kahan makes a formal public information request pursuant to the Public Records Act for 10 projects in Outer State Street area including Century 21 apartments/condo conversion
January 18	<b>Noise Report by Morris Engineering Company that confirms that the Project does not comply with the Noise Element and Noise Element Land Use Compatibility Guidelines</b> filed with 2 <sup>nd</sup> Submittal for DART Review
January 27	2 <sup>nd</sup> submittal for DART Review with report about noise impacts
February 4	Article in Santa Barbara News-Press that described the addition of condos as a "Once humble, small, one-story building that few would have noticed, the office is now a Mediterranean structure that invites a double take."
February 17	City files relating to ABR for 3408 & 3412 State Street were destroyed even though there was a public information pursuant to the Public Records Act which requested those records
February 24	2 <sup>nd</sup> DART comments that mentions nothing about requirement for a zoning modification
February 24	Kahan e-mail to Paul Casey which raises violation of zoning law at Century 21 (3408 & 3412 State Street) and Coffee Bean & Tea Leaf (State and De La Vina Streets) (see Exhibit A to Appeal)
February 28	City Council granted appeal on State Street Lofts
March 10	Danny Kato sends e-mail to Kahan which states that the Century 21 building does not violate the setback requirements because it was permitted as a non-conforming use. (see Exhibit B to Appeal)

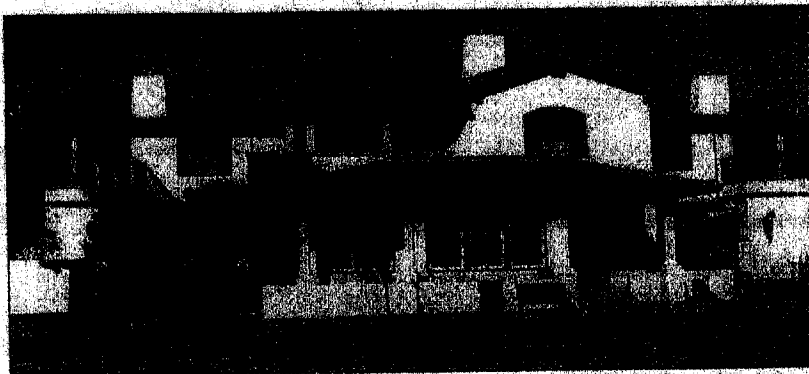


March 20	2 <sup>nd</sup> Kahan e-mail to Paul Casey, Danny Kato and others which explained in detail why there was a zoning violation. (Exhibit C to Appeal)
April 10	Kahan sends e-mail to City Administrator James Armstrong, Casey and others requesting reply to his 2 <sup>nd</sup> e-mail and that he be given notice of any land use action that the City intends to take in the SD-2 zone. (see Exhibit D to Appeal, page 2)
April 10	Bettie Weiss responds to Kahan's e-mail that was sent earlier that day wherein she confirms that I have and will receive notices for decisions in the SD-2 zone and that I will shortly receive a response to my 2 <sup>nd</sup> e-mail. (see Exhibit D to Appeal, page 1)
April 11	Danny Kato send Kahan two e-mails which Kahan's two e-mails about the zoning violation at Century 21 wherein he states that "Our previous conclusion that the Century 21 building conforms to zoning was incorrect. A minor portion of the building that encroaches into the front yard setback, and the plans should have been revised or a Modification approved prior to building permit issuance." (see Exhibit E to Appeal, page 1). Mr. Kato sent a subsequent e-mail that stated "I misread the City Attorneys direction regarding the enforcement of these encroachments, and therefore wrote you incorrectly below. If the applicant does not pursue any discretionary approvals, the City will not enforce on these encroachments, as they have approved building permits. If the applicant does not pursue any discretionary approvals, Planning Staff will process the as-built Modifications or work with the applicant to redesign the project."
June 2	Applicant files 4th submittal for condominium conversion
July 12	Staff Report prepared by Kathleen Kennedy
July 19	Staff Hearing Officer (SHO) approves request for (1) Modification, (2) Condominium Conversion Permit and (3) Tentative Subdivision Map
July 31	Kahan files appeal
September 11	Kahan makes another formal public information request pursuant to the Public Records Act for 10 for all records relating to 3408 - 3412 State Street which is occupied by Century 21 Real Estate and other uses.
September 22	Kathleen Kennedy advises Kahan that there is "no existing Planning file" for the records that have been requested and the "ABR file for the apartment project" was "purged(destroyed)" on February 17, 2006

October 16	Kahan sends City an e-mail which makes a supplemental request for documents that were not produced in response to the public records requests
October 18	Records Supervisor Deana McMillion sends Kahan an e-mail which: <ol style="list-style-type: none"> <li>1. Confirms that the ABR file was destroyed on February 17</li> <li>2. The MEA referred to in the Staff Report for the SHO does not exist</li> <li>3. The Environmental Assessment referred to in the Staff Report for the SHO does not exist</li> <li>4. There is no record of the Environmental Assessment and the City does not know who made that Environmental Assessment</li> <li>5. Kathleen Kennedy prepared an MEA for this project but it is neither signed nor dated.</li> <li>6. There are no documents that support many of the assertions made in the Staff Report for the SHO</li> </ol>
November 2	Planning Commission unanimously denied project and granted appeal in whole
December	Hearing scheduled for January 23, 2007
December	Attorneys for Price, Postel and Parma notify City that they are representing the Applicants
January 23, 2007	First date for appeal hearing (later continued to February 27
February 12	Hearing continued from February 27 to March 27
February 13	Staff contacted me and asked to continue the appeal hearing to April 24
February 13	Kahan writes letter of objection
February 27	Second date for appeal hearing

B-9

## CONTRACTOR'S CORNER



STEVE MALONE / NEWS-PRESS

The Century 21 building at 3412 State St. is seen in its current remodeled state. Below is the building prior to the work.

# Mediterranean makeover lifts facade, adds condos

Passers-by surely won't recognize the Santa Barbara home of Century 21 A Hart Realty on upper State Street these days. Once a humble, small, one-story building that few would have noticed, the office is now a Mediterranean structure that invites a double take.

Construction on the building began in October 2004 and was completed last month at a cost of more than \$1.6 million.

The two-story structure comprises about 7,600 square feet, double the size of the former office. Real estate agents Bob and Debbie Hart of Santa Barbara are the owners of the property and the business at 3412 State St.

In addition to the real estate office

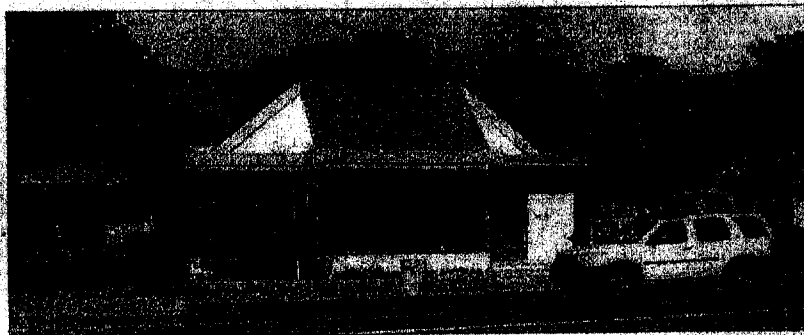
downstairs, the Harts added four residential units on the second floor. Each has two bedrooms and two baths; they range in size from about 875 square feet to 985 square feet.

The Harts plan to put all four units up for sale as condominiums. While they wait for approval from the city to sell the condos as a separate property, they are offering the units for lease with an option to buy.

In order to meet city requirements for creating a new condo development, the Harts had to widen the sidewalks in front of the building.

Don Pedersen of Sugar Land, Texas designed the building, and Melchiori Construction of Santa Barbara was the general contractor.

— Maria Zate



COURTESY OF BOB HART

**From:** James O. Kahan [jok@kahansb.com]

**Sent:** Friday, January 13, 2006 4:50 PM

**To:** Cynthia Rodriquez (cmrodriguez@SantaBarbaraCA.gov);  
(DMcMillion@SantaBarbaraCA.gov)

**Cc:** Brenda Alcazar (balcazar@santaBarbaraCA.gov); Paul Casey  
(PCasey@SantaBarbaraCA.gov); BWeiss@SantaBarbaraCA.gov; Janice Hubbell  
(JHubbell@SantaBarbaraCA.gov); James Armstrong (jarmstrong@SantaBarbaraCA.gov)

**Subject:** Public Records Request

**Importance:** High

**Attachments:** RequestJanuary13,2006.rtf

Attached to this e-mail and set forth below is Public Records Request. Please contact me if you have any questions.

James O. Kahan  
3709 Dixon Street (formerly Magnolia Lane)  
Santa Barbara, California 93105-2419  
E-mail - [jok@kahansb.com](mailto:jok@kahansb.com)  
Telephone - 805-682-2972  
Fax - 805-682-8914

This request includes, but is not limited to:

1. Permits and discretionary approvals
2. Other reports
3. Actions, discussions, resolutions and minutes of the City Council
4. Actions, discussions, resolutions or minutes of the Planning Commissions
5. Actions, discussions, resolutions or minutes of the Environmental Review Committee
6. Actions, discussions, resolutions or minutes of the Architectural Review Board
7. Actions, discussions or minutes of the any other City Commission, Board, Committee, task force or similar entity
8. Notes of any City entity, officer, or employee that was involved with or considered any of the aforementioned projects.
9. Documents related any environmental review.
10. Recommendations
11. Memoranda
12. Correspondence
13. Notes
14. Plans

For the purpose of the request contained herein, "writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. [Government Code § 6252 (f)]

This request is made pursuant to the California Public Records Act (Government Code § 6250 et seq.). "Public records" include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. [Government Code § 6252 (e)]

This request is also made on the separate ground that these documents are necessary to prepare for an appeal to the City Council which is noticed for February 28, 2006. Therefore, time is of the essence and your prompt reply is requested.

Please notify me as soon as possible (1) if you need anything further from me to comply with this request and (2) when the requested writings will be available for review and possibly duplication. I do not need to review all of these documents at one time. Therefore, you may make partial production of these documents before January 23, 2006.

Thank you for your prompt attention to my request.

Sincerely,

James O. Kahan

JAMES O. KAHAN  
ATTORNEY AT LAW

3709 DIXON STREET

(FORMERLY MAGNOLIA LANE)

SANTA BARBARA, CALIFORNIA 93105-2419

TELEPHONE (805) 682-2972

FACSIMILE (805) 682-8914

E-MAIL jok@kahansb.com

January 13, 2006

City of Santa Barbara  
Attention City Clerk

Community Development Department  
City of Santa Barbara  
630 Garden Street  
Santa Barbara, CA 93101

Re: Public Records Request  
Outer State

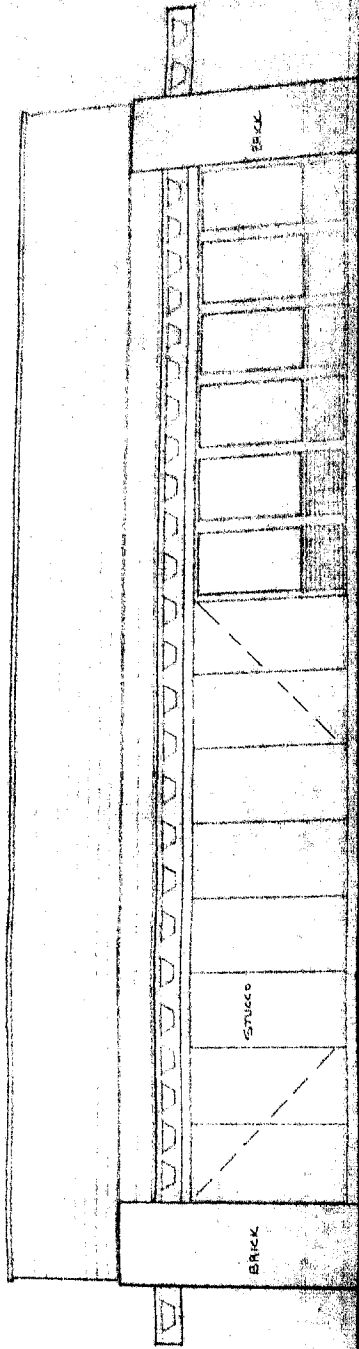
I hereby request to inspect and review each and every writing relating to 10 projects in the S-D-2 area. This request applies to all departments and employees of the City.

These 10 projects are identified as follows:

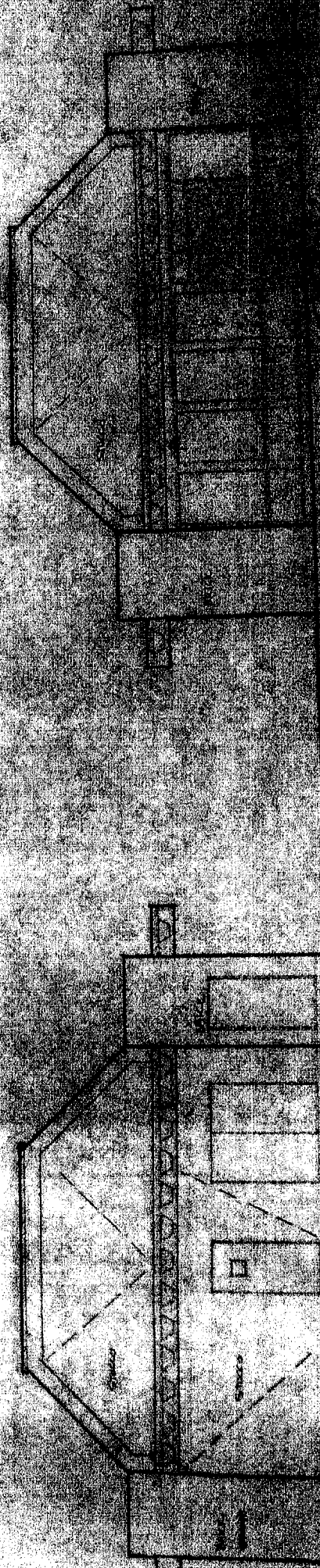
1. Lincolnwood subdivision between Arroyo Burro Creek and La Cumbre Road, north of San Remo and south of Cedar Vista. (No records for this project are sought after the date of the filing of the final map for record),
2. Galleria on the southeast corner of State Street and La Cumbre Road.
3. Commercial project on southwest corner of State Street and La Cumbre Road (which now includes Peet's Coffee, Sushi Teri, UPS and other commercial ventures - at one time identified as 3901 or 3905 State Street)
4. Commercial project on the southeast corner of De La Vina Street and Samarkand Drive that now contains the Surgical Center (3045 De La Vina)t
5. Commercial projects Trader Joe's and Gelsons Market that now contains Trader Joe's at 3025 De La Vina Street.
6. The commercial project for the Coffee Bean and Tea Leaf at the intersection of State Street and De La Vina Street that is now occupied by the Coffee Bean and Tea Leaf (3052 De La Vina Street)
7. The mixed use project on the Southeast corner of State Street and Hope Avenue that contains the La Cresta condos (3791 State Street) and the Fidelity (3793 State Street).
8. Century 21/apartments/condo conversion at 3412 State Street)
9. Two story commercial project located at 3060 State Street
10. Two story commercial project now occupied by Bank of the West and First American Title Company (3780 State Street)

These records for projects identified as Items 2-10 include all records up until the date of issuance of the initial Certificate of Occupancy.





LEFT ELEVATION RIGHT ELEVATION SIMILAR

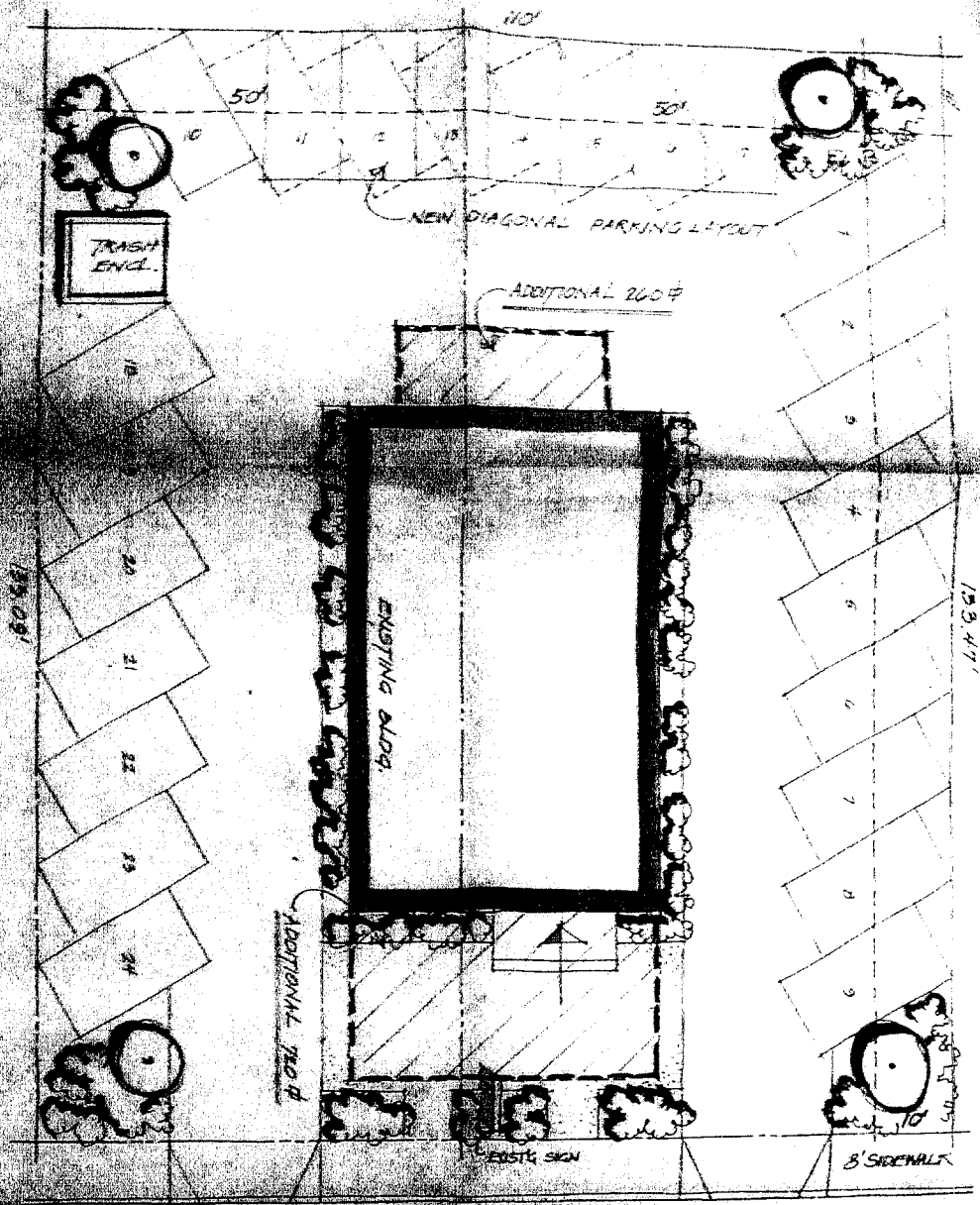


FRONT ELEVATION

MINNIE PEARL'S CHICKEN RESTAURANT - 1969



DRAWN BY: A. Dond/ L.A. C.A.  
 CHECKED BY: J. Dond/ L.A. C.A.  
 DATE: 11/11/03



STATE STREET

LEGAL:

LOTS 24 & 25  
 SAN ROQUE PARK  
 341/2 STATE STREET  
 SANTA BARBARA, CA

EXISTING BLDG.:

2,880 SQ. FT.

ADDITION TO BLDG.:

980 SQ. FT.

TOTAL SQ. FT.:

3,860 SQ. FT.

EXISTING PARKING:

24 SPACES

NOTE:

PARKING ORG. REQUIRES  
 1 SPACE PER 500 SQ. FT.  
 OF BLDG. AREA.  
 3,860 SF = 8 SPACES

SITE: 341/2 STATE STREET

# PROPOSED ADDITION

# MORRIS ENGINEERING COMPANY

P.O. Box 73, Fillmore, CA 93016-0073 • Ph/Fax: (805) 524-3727 • Email: FarmorBob@earthlink.net  
"Sound Advice" - Noise • Pressure Pulsation • Surge • Vibration

January 18, 2006

**Mr. Robert Hart**  
**A HART REALTY**  
3412 State Street  
Santa Barbara, CA 93105

Subj.: Noise Impact at Second Story Decks at  
3412 State Street, Santa Barbara, CA.

Ref.: MEC S/O A611

Dear Mr. Hart:

Exterior sound levels at the second story decks were measured during peak morning traffic on January 11, 2006. The measured short time equivalent sound levels during peak traffic hours are representative of the 24 hour Community Equivalent Noise Level. The California Administrative Code and the Uniform Building Code (References 1 & 2, Appendix A) require a noise isolation study if residences are within the 60 CNEL (Community Noise Equivalent Level) noise contour. This is to assure that, with windows closed, the interior noise levels from exterior sources do not exceed 45 CNEL in any habitable room. For typical community noises, the Ldn (Day-Night average sound level) is equivalent to CNEL. The peak-hour traffic sound level (Leq) is equivalent to the 24 hour CNEL. Acoustical Terms are in Appendix B.

The real estate office is on the ground floor and the 4 residential units are on the second floor. Three of the units have open decks overlooking State Street. The primary exterior noise source at these units is the traffic on State Street. The fourth unit deck is on the side of the building away from State Street and is not impacted by the street traffic.

The primary community noise is traffic noise from State Street. Compounding the noise problem are the bus stops directly in front and across the street. Additional noise is generated by the stop and go of traffic at the street signal just west of the building.

Peak hour morning traffic noise was measured at units A, B, and D on Wednesday, January 11. The sound level meter microphone was located 3 feet from the deck railing and at ear height (5 feet). The State Street traffic noise was 62.5 Leq on the decks of units A and D (east and west). The deck at unit B has the view of State Street slightly obstructed to the east and west and has a front wall instead of iron railings. Thus the sound level is reduced to 60.5 Leq. Interior sound levels with



doors and windows closed were well below 45 CNEL in all rooms. Measured interior levels were 40 Leq or less.

The exterior 62.5 CNEL is above the 60 CNEL targeted limit. Sound levels for some sound barrier heights at the exterior railings were calculated. The results are in Table 1. A solid barrier (glass or Lexan) 4-foot high may reduce the deck sound levels below 60 CNEL. The reduction will not be as great as Tabulated because of reflections off the ceiling and back wall. Also, any sound barrier must be airtight at the base and junctions with the building walls to achieve optimum noise reduction. This presents a problem of drainage for the exterior decks.

In conclusion, the significant noise source at the units is traffic noise from State Street. Based on field measurements and calculations, the future interior noise levels will be well below 45 CNEL. The units meet the requirements of the Administrative Code. Although exterior deck noise levels facing State Street are above 60 CNEL, any noise barriers to reduce the level below 60 CNEL would reduce the natural air circulation on the deck and create a drainage problem.

If you have any questions, do not hesitate to call me.

Very truly yours,

Robert P. Morris, P.E.  
Consultant

Enc.: Table 1 – Traffic Noise Calculations  
Appendix A – References  
Appendix B – Acoustic Terminology

# CALIFORNIA ARCHITECTS BOARD

**Licensee Name:** PEDERSEN DONALD EDWIN

**License Type:** ARCHITECT

**License Number:** C4420

**License Status:** CURRENT Definition

**Expiration Date:** July 31, 2007

**Issue Date:** September 25, 1964

**City:** ROANOKE

**County:** OUT OF STATE

**This information is updated Monday through Friday - Last updated: MAR-20-2007**

## **Disclaimer**

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[Back](#)

Exh 8 page 1 of 7

# CALIFORNIA ARCHITECTS BOARD

**Licensee Name:** JOHNSON RICHARD ELLSWORTH

**License Type:** ARCHITECT

**License Number:** C7144

**License Status:** CURRENT Definition

**Expiration Date:** April 30, 2007

**Issue Date:** October 16, 1972

**City:** SANTA BARBARA

**County:** SANTA BARBARA

**This information is updated Monday through Friday - Last updated: MAR-20-2007**

## **Disclaimer**

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**STATE OF CALIFORNIA  
DEPARTMENT OF REAL ESTATE**

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License information taken from records of the Department of Real Estate on 3/21/2007 9:37:36 AM

**License Type:** OFFICER

**Name:** Hart, Robert Dougal

**Mailing Address:** 2809 CLINTON TER  
SANTA BARBARA, CA 93105

**License ID:** 00977593

**Former Name(s):** NO FORMER NAMES

**Affiliated Licensed Corporation(s):** 00825256 - Officer Expiration Date: 11/07/09  
Century 21 A Hart Realty Inc  
CANCELED AS OF 09/01/06

**Comment:** NO DISCIPLINARY ACTION

NO OTHER PUBLIC COMMENTS

>>>> Public information request complete <<<<

Exh B page 3 of 4

**STATE OF CALIFORNIA  
DEPARTMENT OF REAL ESTATE**

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License information taken from records of the Department of Real Estate on 3/21/2007 9:38:17 AM

**License Type:** SALESPERSON

**Name:** Hart, Deborah Dee

**Mailing Address:** 3412 STATE ST  
SANTA BARBARA, CA 93105

**License ID:** 01009881

**Expiration Date:** 12/08/08

**License Status:** LICENSED

**Original License Date:** 12/09/88 (Unofficial -- taken from secondary records)

**Former Name(s):** Tautrim, Deborah Dee

**Employing Broker:** License ID: 00825256  
Century 21 A Hart Realty Inc  
3412 STATE ST  
SANTA BARBARA, CA 93105

**Comment:** NO DISCIPLINARY ACTION

NO OTHER PUBLIC COMMENTS

>>>> Public information request complete <<<<

Exh 8 page 4 of 14

**STATE OF CALIFORNIA  
DEPARTMENT OF REAL ESTATE**

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License information taken from records of the Department of Real Estate on 3/21/2007 9:39:09 AM

**License Type:** CORPORATION

**Name:** Century 21 A Hart Realty Inc

**Mailing Address:** 3412 STATE ST  
SANTA BARBARA, CA 93105

**License ID:** 00825256

**Expiration Date:** 11/07/09

**License Status:** LICENSED

**Original License Date:** 10/12/81 (Unofficial -- taken from secondary records)

**Former Name(s):** Century 21 Bob Bree Realty Inc

**Main Office:** 3412 STATE ST  
SANTA BARBARA, CA 93105

**Licensed Officer(s):** DESIGNATED OFFICER  
01076791 - Expiration Date: 11/07/09  
Comstock, Jeffrey L

00337270 - Expiration Date: 11/07/93  
Bree, Robert Emmett  
EXPIRED AS OF 11/08/93

00977593 - Expiration Date: 11/07/09  
Hart, Robert Dougal  
CANCELED AS OF 09/01/06

**DBA** Century 21 Bob Bree Realty  
ACTIVE AS OF 10/12/1981

**Branches:** NO CURRENT BRANCHES

**Salespersons:** 01216510 - Adams, Janice Elaine

01711638 - Arellanes, Teresa Ann

00696494 - Bauer, Edna Eileen

01736126 - Birchim, John Justin

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01511018 - Breive, Tatyana  
01202470 - Briner, Richard Joseph  
01763958 - Catalini, Daniel  
01458185 - Davis, Julie Kristin  
01465610 - Flores, Juan Manuel  
01760688 - Fuhrer, Walter Christoph  
01325396 - Gaete, Cecilia O  
01376391 - Gill, Gurpal Singh  
01280495 - Giordano, Kathleen Marie  
01009881 - Hart, Deborah Dee  
01718593 - Ibarra, Luis Antonio  
01475575 - Jacobsen, Robert Eugene  
00594838 - Johnson, Joyce Lee  
01493083 - Joy, Julie  
01387945 - Khemani, Madhu K  
01702453 - Killenberger, Laureen Teresa  
01436335 - Klein, Pilar Elizabeth  
01431553 - Kolendrianos, Andriana Christina  
01477763 - Lopez, Joanna Castro  
01391826 - Luoma, Paul Tapio  
01196557 - Marsh, Donald Edward  
01510885 - Maxwell, Marlene V  
01472671 - Myers, Melissa Sharai  
01718168 - Preciado, Edgar Adrian  
01399785 - Rangikitpho, Cassandra Vera  
01372748 - Reichard, Glenn Eric

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01436269 - Streett, Lisa

01383514 - Vignocchi, Joan Marie

01760785 - Yannalfo, Gary Gerard

01709178 - Zahradnickova, Stepanka

**Comment:**

NO DISCIPLINARY ACTION

NO OTHER PUBLIC COMMENTS

>>>> Public information request complete <<<<

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# A MIXED USE DEVELOPMENT

## for MR. & MRS. HART

3412 STATE STREET SANTA BARBARA, CA. 93105

PHONE - 805-687-7591

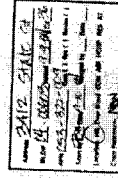
**STRUCTURAL ENGINEER**  
Kevin Vandervort  
7952 Winchester Circle  
Goleta, CA. 93117  
Ph. 805-685-2506 Fax 805-685-2506

**MECHANICAL ENGINEER**  
MEC Engineering Consultants  
621 W. Micheltorena Street  
Suite A  
Santa Barbara, CA. 93101  
Ph. 805-957-4632

**ELECTRICAL ENGINEER**  
JMPE Electrical Engineering  
156 W. Alamar Avenue  
Suite B  
Santa Barbara, CA. 93106  
Ph. 805-569-9216 Fax 8-5-569-2405

**CHITECT**  
old E. Pedersen  
Cavaller Drive  
oke, V.A. 24018  
540-769-6040 Fax 540-769-0134

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**JMPE Electrical Engineering**  
**156 W. Alamar Avenue**  
**Suite B**

**Santa Barbara, CA. 93106**

**Ph. 805-569-9216 Fax 8-5-569-240**

**City of Santa Barbara**  
**FIRE DEPARTMENT**  
**ACCEPTANCE**

DATE: "11" 26 2004 BY: 63

This acceptance has been made based on the information provided for our review and does NOT waive any requirement of other laws or ordinances of the City of Santa Barbara. (805) 564-5702

City of Santa Barbara - Community Development Department

**PLANNING DIVISION APPROVAL**

ZONING: \_\_\_\_\_ DATE: \_\_\_\_\_ BY: trc

DESIGN REVIEW: \_\_\_\_\_ DATE: 3-7-04 BY: \_\_\_\_\_

**FINAL APPROVAL** DATE: 3-7-04 BY: \_\_\_\_\_

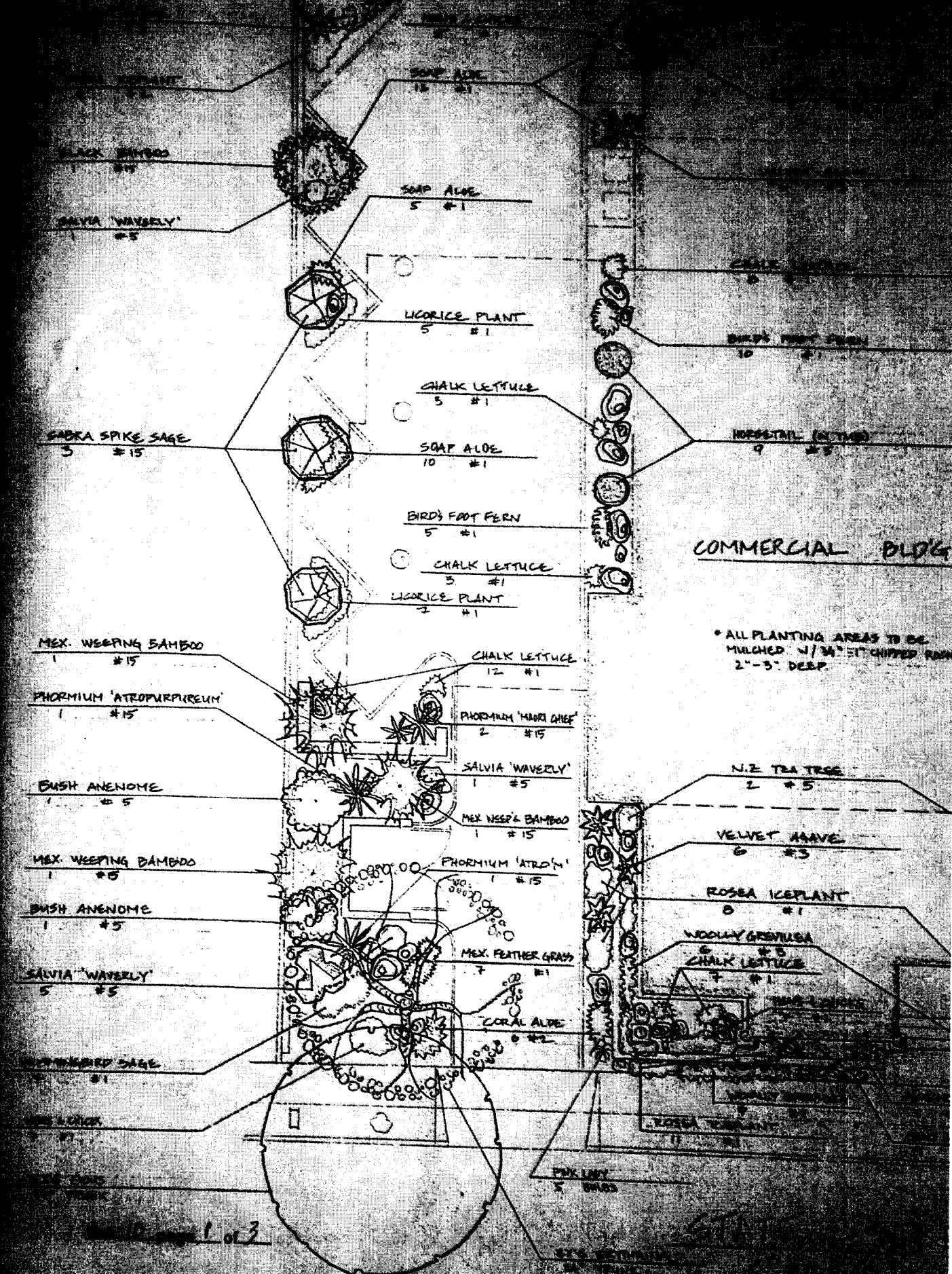
☒ Architectural Board of Review

☐ Historic Landmarks Commission

This approval is for the site plan and project description

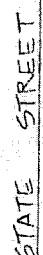
submitted, and does NOT waive any requirement of other laws or

ordinances of the City of Santa Barbara. (805) 564-5702





[illegible]



KEY:  FLOCKS

STANDARD PUBLISHING HOUSE

1 CITY OF SANTA BARBARA PLANNING COMMISSION

2 STATE OF CALIFORNIA

3 --oOo--

4 ITEM NO. II-C

5 PRELIMINARY MATTERS. PUBLIC COMMENT BY JAMES KAHAN

7 ITEM III-A

8 APPEAL BY TISHA LEVY OF DECISION OF STAFF HEARING

9 OFFICER REGARDING 625 FLORA VISTA

10 COMMENT BY JAMES KAHAN

12 ITEM III-B

13 APPEAL BY JAMES KAHAN OF A STAFF HEARING OFFICER

14 APPROVAL REGARDING 3408 AND 3412 STATE STREET

16 ITEM V

17 QUESTION BY COMMISSIONER THOMPSON REGARDING RECORDS

18 DESTRUCTION POLICY

19 --oOo--

20 HEARING BEFORE THE PLANNING COMMISSION

21 CITY OF SANTA BARBARA

22 Transcript of Portions of Recorded Proceedings

23 Thursday, November 2, 2006

24  
25 Transcribed by:

Marlene Struss



PARTICIPANTS

Planning Commissioners

Chair John Jostes

Vice-Chair Charmaine Jacobs

Commissioner Stella Larson

Commissioner George C. Myers (absent)

Commissioner Bill Mahan

Commissioner Harwood A. White, Jr.

Commissioner Addison S. Thompson

City Staff

Jan Hubbell, Senior Planner

Kathleen Kennedy, Assistant Planner

Scott Vincent, Assistant City Attorney

Bettie Weiss, City Planner

Applicants' Representative

Dave Tabor

Appellant's Representative

James Kahan, Appellant

1	Public Speakers	
2	Mickey Flacks	
3	Michael Self	
4	Naomi Kovacs, Citizens Planning Association	
5	Paul Hernadi	
6	Cheri Rae McKinney	
7	Gil Barry	
8	David Landecker	
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1                   SANTA BARBARA, CALIFORNIA

2                   THURSDAY, NOVEMBER 2, 2006

3  
4  
5  
6  
7  
8  
9                   \* \* \*

10                   (Item III-B, Kahan appeal. 3408 and 3412  
11 State Street.)

12           CHAIR JOSTES: Our next item is an appeal by  
13 James Kahan of a staff hearing officer approval of an  
14 application regarding 3408 and 3412 State Street.

15                   As we set things up, Ms. Hubbell, do you  
16 have any introductory remarks at this time?

17           MS. HUBBELL: No. The staff presentation will be  
18 given by Ms. Kennedy.

19           CHAIR JOSTES: While we're waiting for Ms.  
20 Kennedy to set up, I just want -- wanted to make a  
21 note on -- on -- on process here. We're going to hear  
22 a staff presentation. Then we're allowing the  
23 appellant 15 minutes to make a -- a presentation to  
24 the Commission. We will follow that with a  
25 opportunity for the applicant to have equal time to

1 respond to the points that the appellant has made. At  
2 that point the Commissioners may voice questions to  
3 either the appellant or the applicant.

4 Following those questions we'll open it up  
5 for public comment and then move towards a decision on  
6 this matter.

7 Ms. Kennedy.

8 MS. KENNEDY: Yes, good afternoon, Chair and  
9 Commissioners. The project address is 3408 and 3412  
10 State Street. On July 19th, 2006, the staff hearing  
11 officer approved an application for a condominium  
12 conversion of an existing mixed use development.

13 On July 31st of this year the appellant  
14 submitted a letter to the City appealing all approvals  
15 and the CEQA determination granted by the staff  
16 hearing officer.

17 The project consists of a proposal to  
18 convert an existing two-story mixed use building  
19 consisting of 3,436 square feet of office space on the  
20 first floor and four two-bedroom apartments on the  
21 second floor into five condominium units.

22 The proposal also includes a modification  
23 request to allow minor as-built first-floor  
24 encroachments into the front yard setback and an  
25 exception to the physical standard requirements for

1 condominium -- condominium conversions to allow only  
2 one parking space for each residential unit instead of  
3 two.

4           The original one-story commercial building  
5 had a height of approximately 19 1/2 feet and a front  
6 yard setback of approximately three feet. Therefore  
7 it was nonconforming to the SD-2 overlay zone, which  
8 requires a 20-foot front yard setback for single-story  
9 buildings that are greater than 15 feet high.

10           The mixed use project, which was issued a  
11 building permit in September of 2005, consisted of the  
12 remodel of the first floor commercial space and the  
13 construction of four apartments on the second floor.  
14 The second floor with the front yard setback of  
15 approximately 26 feet exceeds the required 20-foot  
16 setback.

17           The new construction on the first floor  
18 included minor encroachments that extended further  
19 into the 20-foot setback and already existed with the  
20 original building. These encroachments consist of  
21 roof overhangs and columns on the first floor.

22           No additional habitable space was created as  
23 a result of -- of these minor encroachments.

24           Staff acknowledges that a modification to  
25 allow the minor first-floor encroachments into the

1 front yard setback should have been required when the  
2 mixed use project was initially reviewed. At the time  
3 it would have been reviewed by the modification  
4 hearing officer. Therefore, the request for a  
5 modification was required as part of the -- of this  
6 condominium conversion application. And staff  
7 recommended approval of the -- of the modification for  
8 the minor encroachments.

9           The original mixed-use development was  
10 reviewed by the ABR and received final approval in  
11 April of 2004. Since no new development was proposed  
12 with the condominium conversion application and it had  
13 been recently constructed, the project was not  
14 required to be reviewed again by the ABR.

15           Staff determined that the project is exempt  
16 from further environmental review pursuant to CEQA  
17 Guidelines Section 15301, "Existing Facilities." This  
18 includes conversions of existing multifamily  
19 residences into common interest ownership or  
20 subdivision of existing commercial buildings where no  
21 other physical changes occur. In this case, because  
22 there were no physical changes, the exemption category  
23 clear fits this project description.

24           Regarding noise, when the existing mixed-use  
25 development was under review a noise study was not

1 required. However, one was required during review of  
2 the condominium conversion application. The noise  
3 element guidelines state that the normally acceptable  
4 noise exposure of the private outdoor living areas is  
5 60 dba. The noise study that was prepared concludes  
6 that the noise levels for the private outdoor living  
7 areas for Units A, D, and B -- or actually A and D,  
8 which are on the -- the front -- I can show you on --  
9 on this elevation -- here and here the noise levels  
10 would be 62.5, and for the Unit B in front here would  
11 be 60.5.

12 A study further states that the noise levels  
13 could be reduced to below 60 if sound barriers were  
14 installed, but staff was concerned that these may not  
15 be acceptable by the ABR.

16 Alternatively, because the decks are more  
17 than twice the size that are required, the required  
18 96-square-foot portion of each deck may conform to the  
19 noise guidelines, although this has not been verified  
20 by the noise consultant as of yet.

21 At this point staff recommends that the  
22 Planning Commission require compliance with the noise  
23 element by doing one of these three items: either  
24 require the sound barriers on the decks of Units A, B,  
25 and D; or require verification from the noise



1 consultant that the required portions of those decks  
2 do comply; or alternatively, given that the existing  
3 noise levels are only slightly higher than 60 and they  
4 are below the 70 dba threshold and they're not  
5 considered a environmental impact, given that the  
6 structure is currently existing, the Planning  
7 Commission could determine that in this instance a  
8 finding of consistency with the General Plan noise  
9 guidelines could be made.

10 I'd also like to note that if the MTD bus  
11 stop, which is located in front of the building, were  
12 to be relocated -- and that may happen at some point  
13 in the future -- that would definitely lower the noise  
14 levels to an area of less than 60 dba.

15 Regarding the parking exception, the  
16 proposed project does conform to all the physical  
17 standard requirements of the Condominium Conversion  
18 Ordinance except for parking. They do not provide the  
19 two parking spaces per residential unit that are  
20 required. Although mixed use developments that have  
21 up to 50 percent of residential use are allowed to  
22 have a reduction in the residential parking by 50  
23 percent, in the Condominium Conversion Ordinance two  
24 parking spaces are required per unit. An exception to  
25 the parking standard may be granted if certain

1 findings can be made.

2 In this case staff recommended that the  
3 exception be made to allow four spaces instead of  
4 eight based on the mixed-use development. This  
5 project does have the ability to share parking with  
6 the commercial spaces.

7 Staff recommends that the Planning  
8 Commission deny the appeal, thereby upholding the  
9 staff hearing officer's decision to approve the  
10 modification to allow the minor encroachments into the  
11 front yard setback, a tentative subdivision map for  
12 the one lot subdivision, and the condominium  
13 conversion permit to convert the commercial space and  
14 the four apartments to condominium units, including  
15 the exception to the parking requirement, making the  
16 findings that are contained in the staff report and  
17 subject to the conditions of approval that have been  
18 prepared under Staff Hearing Officer Resolution No.  
19 04206.

20 Also like to let you know -- and I think  
21 you've received these already -- we did receive one  
22 letter and two e-mails in support of the appeal.

23 That concludes staff presentation at this  
24 time.

25 CHAIR JOSTES: Okay.

1 Ms. Weiss.

2 MS. WEISS: Chair Jostes, thank you.

3 I have a few additional comments relative to  
4 the key issues in this appeal.

5 One of the primary concerns raised by the  
6 appellant is the two-step process. That's the  
7 terminology we've been using now for a while to  
8 describe a project that first went through an approval  
9 process limited to design review and building permit  
10 with no public hearing regarding land use decisions  
11 such as a condominium or a modification and then at  
12 some later point, not much later in some instances, it  
13 comes in and requests the condominium conversion  
14 because the building is under construction or recently  
15 completed or only been completed for a short period of  
16 time.

17 So we've called this the two-step process.  
18 And staff shares the concern of the appellant,  
19 actually, as to whether or not this is a good planning  
20 process. In the two-step mode the review is more  
21 limited at the ABR. Questions such as road  
22 dedication, subdivision improvements, things like  
23 that, aren't considered during that two-step process.  
24 Additional findings of sound community planning or  
25 more thorough General Plan review, that's not

1 conducted during the design review/building permit  
2 review.

3           So staff agrees that there is concern about  
4 the City's current ordinance. And that's a legitimate  
5 concern. However, staff also feels it is very  
6 important, as the staff hearing officer, as the staff  
7 recommending to the Commission and the Commission and  
8 Council's actions reflect the current Municipal Code  
9 standards as they are today or, if they need to be  
10 changed, then consider changing them.

11           But this is by no means a unique project.  
12 And we're concerned about the idea of taking a unique  
13 action with respect to this project in terms of the  
14 two-step process. There have been many projects in  
15 the last several years -- this amendment occurred in  
16 1992 when the two-step was allowed to happen in less  
17 than a five-year period -- that have come through this  
18 review process and been approved by the Planning  
19 Commission.

20           And the City Council has requested that we  
21 explore with the Commission and the community changing  
22 this two-step process. In fact that question was  
23 before the City Council just this Tuesday. And they  
24 did initiate that as a possible amendment to the  
25 Condominium Conversion Ordinance.

1           They did not take any other immediate action  
2 that would send a different message to the Commission  
3 or to staff to treat these projects differently than  
4 what the code currently provides. So I feel that the  
5 staff hearing officer review was consistent with the  
6 current code and did not take a varying position  
7 because there is a concern and we may -- may change  
8 the rules regarding the two-step process. Because  
9 that's not known whether or not we will.

10           One -- one condition did come forward in the  
11 condominium conversion process that was different than  
12 the ABR. And that is the dedication of additional  
13 right of way for possible future enhancements to the  
14 State Street corridor. And that is the type of  
15 condition that would have been considered when the --  
16 if the project had come straight in as a condominium.  
17 So I was happy to see that the staff recommended it.  
18 The applicant agreed to that dedication. And it is  
19 shown on the tentative map as was approved.

20           Another point, simply one that I wanted to  
21 comment on in the process, is the staff hearing  
22 officer process is new. And we've had a number of  
23 questions come up. And one question has come up a  
24 couple of times is, is this project subject to the  
25 staff hearing officer review, or is there something

1 about the code and the nature of the project that  
2 would require Planning Commission review?

3 For example, we -- I think we're all  
4 concerned when we had -- started to see these side-by-  
5 side projects. Three units on one lot and four units  
6 on another. It looks like a seven-unit condominium  
7 and should perhaps come to the Planning Commission.  
8 It's intended that four-unit residential condominiums  
9 is the limit at the staff hearing officer.

10 But in this case we have the four for the  
11 residential. And the staff hearing officer may  
12 approve commercial condominiums of un -- undefined  
13 limited size. We did not limit the size of the  
14 commercial condominium reviews that can -- can occur  
15 at the staff hearing officer, and for a number of good  
16 reasons. There really aren't many unique standards to  
17 apply to a commercial development when it goes from  
18 existing structure to condominium.

19 We -- we held a discussion with the  
20 Commission, the community, and the Council on this.  
21 So we consulted with the City Attorney for this  
22 project as well as one that -- there are others in the  
23 process that are mixed use. So mixed use projects  
24 were not precluded from the staff hearing officer.

25 So it's the staff's opinion, supported by

1 the City Attorney advice, that this project is within  
2 the purview of the staff hearing officer. There are  
3 code provisions that explain all that. So that is a  
4 -- that is a procedural issue. It's an administrative  
5 and interpretation of the code that's fairly  
6 straightforward, so we don't really consider that to  
7 be a substantive appeal issue.

8 And then the staff has explained the  
9 modification so I'm not going to add any comment on  
10 that.

11 And if -- the transportation staff  
12 recommended that the project meets its parking demand  
13 as a mixed use building. I -- I concurred with that  
14 -- that recommendation during the review.

15 So I'll be available if you have any  
16 questions. Thank you.

17 CHAIR JOSTES: Thank you.

18 Any questions of staff at this point in  
19 time?

20 Let's start with Ms. Jacobs.

21 MS. JACOBS: Thank you, Chair Jostes.

22 Several of my questions were answered by  
23 Mrs. -- by Ms. Weiss's presentation, especially about  
24 the -- the five units in that for residential and  
25 apparently an unlimited number of commercial

1 condominiums could be packaged together to go to the  
2 staff hearing officer rather than the Commission.

3 And I would like a little more explanation  
4 about the -- let me backtrack a bit. The -- the  
5 review process for rental units is a little bit more  
6 relaxed because the City wants to encourage people to  
7 produce rental units is my -- my quick understanding  
8 of that. Because we need residential rental units for  
9 our city and for our people.

10 Now, why are we getting rid of the five-year  
11 interim period during which time it would be used as a  
12 rental property before requesting a condominium  
13 conversion in this case and apparently in general?

14 CHAIR JOSTES: Ms. Weiss?

15 MS. WEISS: Thank you.

16 Responding to Commissioner Jacobs.

17 One idea that the review process is simpler  
18 for rental is this idea that we want to support  
19 rental. But -- and -- and I tend to agree with that.

20 However, I feel that technically really the  
21 reason that rental is easier is that the land use  
22 permitting decision is already made, that it's a  
23 permitted use. It doesn't require any planning  
24 findings under the State Map Act and all those kinds  
25 of things. You're -- you're obtaining design review



1 and a building permit for a permitted use.

2           So I -- I'm glad that it is a bit easier for  
3 rental. We -- we do point that out, but that is not  
4 -- that's not really the principal reason; it's just  
5 the zoning. The way it works is that if that's a  
6 permitted use and you could get a building permit,  
7 then that's the case.

8           Now, this five-year period, there was an  
9 amendment in 1992 -- I think that was the right year  
10 -- that amended that paragraph. It's not this action  
11 that is waiving the five years. The standard was set  
12 in 1992 that you did not have to wait the five years  
13 if you met the physical standards for new residential  
14 condominium development. And what that means is that  
15 the unit size is sufficient, that the laundry  
16 facilities are there, that there are separate utility  
17 metering. Those are the physical standards of the new  
18 residential condominium. And this project meets those  
19 standards. Therefore, they may request a conversion.

20           So we're no longer weighing the -- the five-  
21 year period or those standards. Now we're looking at  
22 the Condominium Conversion Ordinance findings.

23           MS. JACOBS: So it's the findings and the  
24 attributes of the building. However, it is still a  
25 discretionary decision. We are not required to find

1 in favor of the conversion now as opposed to some  
2 years from now?

3 MS. WEISS: Right. You would just consider the  
4 application before you today based on the -- the  
5 findings. And those findings don't say, well, we  
6 think you should wait another three years. That --  
7 there -- but it's the physical design of the project,  
8 the neighborhood compatibility, the -- the conformity  
9 with the General Plan. They're -- they are provided  
10 on page 5 of your staff report.

11 MS. JACOBS: Okay. Sorry to have a lot of  
12 questions on this one, but there's been a sort of  
13 chain of events that have taken place, and I just want  
14 to sort them out before going much further.

15 In the project description the parking is  
16 described as a -- as a -- not as a mod but as an  
17 exception. And can you explain the difference in  
18 terminology there?

19 MS. HUBBELL: Chair Jostes and Commissioner  
20 Jacobs. The Condo- -- Condominium Conversion  
21 Ordinance of course assumes that what's there is  
22 existing and -- and allows for exceptions to certain  
23 -- for -- for several types of things that might not  
24 be in an existing apartment building. These -- this  
25 could be laundry facilities, it could be open space,

1 and parking is also one of them.

2 And instead of doing a modification process,  
3 it was looking at an exception process that looked at  
4 the idea that in many cases these buildings would have  
5 been around for a while and may provide the  
6 opportunity for a lower cost for-sale units and that  
7 there might be offsetting amenities.

8 So that's the reason we did an exception  
9 process that's around the conversion process rather  
10 than a standard modification process. This would not  
11 require a parking modification if it had come to you  
12 as brand-new condos. Because as a mixed use project  
13 where less than 50 percent of the area is residential,  
14 then the -- the -- you can do the mixed use approach,  
15 which requires you to provide only one space per unit  
16 and do shared parking with the commercial space.

17 So we kind of got caught in a bind in this  
18 case actually between mixed use -- we should have  
19 probably picked up the mixed use conversion issue when  
20 we -- when we added the mixed use requirement or  
21 allowance in parking and didn't do it. And so we've  
22 -- we are now in this realm of having to request the  
23 exception because of the conversion language.

24 MS. JACOBS: Okay. This is a long and winding  
25 road on this one.

1           And then in the SD-2 overlay there's a  
2 requirement for development plans. And has a  
3 development plan been part of this process, or is it  
4 an optional kind of requirement?

5           CHAIR JOSTES: 2887.300 I think it is. Yeah.

6           MS. JACOBS: Maybe there's a short answer.

7           MS. HUBBELL: I think that's development plan  
8 under Measure E for the -- for the nonresidential.

9           MS. JACOBS: For the square footage?

10          MS. HUBBELL: And this was -- this -- there was  
11 no increase in residential square footage as part of  
12 this project.

13          MS. JACOBS: Okay, this might end up being a  
14 question for the appellant because that's -- it was  
15 raised in the appeal documents.

16          MS. HUBBELL: There -- there is no special  
17 requirement for a development plan approval for the  
18 SD-2 Zone. It was amended out some time ago. So it's  
19 -- but there is, depending on -- depending on what  
20 you're doing, there might be under 2887 the Measure E  
21 process. But as I indicated, there -- since there was  
22 no increase in commercial square footage, there was no  
23 development plan required.

24          MS. JACOBS: Okay. Those are my questions.  
25 Thank you.

1 CHAIR JOSTES: Mr. Thompson?

2 MR. THOMPSON: Thank you, Mr. Chairman.

3 In researching this I noticed in some  
4 language in some of the ABR hearings a reference to 21  
5 parking spaces. Was that a mistake, or was there an  
6 earlier plan that re- -- that showed an increase in  
7 parking from the 18 that exist now?

8 MS. KENNEDY: Chair and Commissioner?

9 CHAIR JOSTES: Yes.

10 MS. KENNEDY: I'm not quite sure about that.  
11 There may have -- may have been an earlier version of  
12 the project, but perhaps the applicant can answer that  
13 question. That was early on.

14 MR. THOMPSON: Okay. Maybe we'll get to that  
15 later then.

16 The other question I have is for the  
17 attorney. Scott, the appellant and at least one other  
18 person alluded to the fact that this should not be an  
19 allowable appeal because it was filed outside the ten  
20 days from the show's approval. Would you talk to that  
21 a little bit.

22 MR. VINCENT: Mr. Chair, Members of the  
23 Commission, the City's process sets forth a ten-day  
24 period for appeals. If the appeal period ends on a  
25 Saturday, Sunday, or holiday, the next business day is

1 an acceptable date for the City to accept an appeal.  
2 This is a common practice. It's actually found in the  
3 Code of Civil Procedure for the courts, and it is a  
4 common practice for municipalities to follow the same  
5 kind of procedure of accepting appeals on the next  
6 business day if the -- if the City is just closed for  
7 business on the tenth day, in our case for our appeal  
8 period. I believe that's what occurred in this.

9 I -- I read the -- the letter from the  
10 representative for the applicant. And I -- you know,  
11 saying that the appeal period was 12 days or that the  
12 appeal was filed on the 12th day. I believe that that  
13 was basically the Monday following the Saturday that  
14 the ten-day period ended on.

15 MR. THOMPSON: Okay, so there -- that is not an  
16 issue then. That's cleared off the deck.

17 MR. VINCENT: That does -- no, that's commonly  
18 done in the City.

19 COMMISSIONER THOMPSON: Right.

20 CHAIR JOSTES: Other questions?

21 Okay, Mr. Mahan.

22 COMMISSIONER MAHAN: Thank you, Mr. Chair.

23 I -- I want to follow up on a couple of  
24 questions that Commissioner Jacobs brought up. The --  
25 the issue of the -- of this condominium conversion and

1 the -- the verbiage at the end of that last paragraph,  
2 which says if it meets all the requirements of new  
3 condominiums. But up above in item C it says that the  
4 building will -- is in -- in all respects in  
5 compliance with the Zoning Ordinance. Now, it's my  
6 understanding that this building isn't in all respects  
7 compliant with the Zoning Ordinance, that there are  
8 some problems with setbacks and there's this SD-2 20-  
9 foot thing and et cetera.

10 So how does that -- how does that work for  
11 us?

12 MR. VINCENT: Mr. Chair, Members of the  
13 Commission. I'll -- I'll field that one.

14 COMMISSIONER MAHAN: Okay.

15 MR. VINCENT: This is a common situation that the  
16 Commission finds itself in --

17 UNIDENTIFIED MALE SPEAKER: Yes, it is.

18 MR. VINCENT: -- when looking at a condo  
19 conversion. There are frequently situations where an  
20 application does not comply with the strict sense of  
21 the zone. That's why you'll see many times the  
22 findings will say, "Upon approval of the  
23 modification --"

24 COMMISSIONER MAHAN: I see.

25 MR. VINCENT: -- "the project meets the zoning."

1 And there -- and so you have two discretionary actions  
2 in that case. First you have to find -- you know,  
3 approve the modification. That resolves the zoning  
4 issue. Then you can make your finding.

5 So you have to have those -- you have to  
6 have the factual situation in line for you not only to  
7 support the modification. That -- and if you don't  
8 find that situation, you don't get to the second  
9 question of -- of approving the tentative map. So  
10 that's -- that's why you see many of the modification  
11 requests in conjunction with condo conversions.

12 COMMISSIONER MAHAN: Okay, thank you. I  
13 understand that now.

14 MS. HUBBELL: Additionally, I would add that it's  
15 -- it could also be legally nonconforming with the --  
16 with the Zoning Ordinance, as allowed by the Zoning  
17 Ordinance.

18 COMMISSIONER MAHAN: Could be legally. And part  
19 of this is legally nonconforming. I understand that.

20 The -- the other question that I have is  
21 about the parking, the -- this mixed use issue where  
22 -- where it's -- where it says that the residents --  
23 residential uses occupying up to 50 percent. Up to 50  
24 percent. But in this particular instance the  
25 residential units are more than 50 percent of the



1 commercial. The -- the residential units are 3490  
2 square feet, and the commercial is 3436. So -- the --  
3 I guess my question is, does the rule then just apply  
4 to a certain part of the residential and the other  
5 residential it doesn't apply to? Or it doesn't apply  
6 at all?

7 MS. HUBBELL: Chair Jostes, Commissioner Mahan, I  
8 ended up with a slightly different number on the  
9 addition, and I ended up with it being less than 50  
10 percent.

11 COMMISSIONER MAHAN: Okay, well, I added the --  
12 the sizes of the four units two times. And I came up  
13 with 3490 square feet.

14 MS. HUBBELL: I think I came up with 3420. It's  
15 close.

16 COMMISSIONER MAHAN: And (inaudible) --

17 What?

18 MS. HUBBELL: It is close. And I'll go back --

19 COMMISSIONER MAHAN: It is close. It is close.  
20 I understand it is close.

21 CHAIR JOSTES: Yes, Ms. Kennedy.

22 MS. KENNEDY: If you look at the numbers you can  
23 see it with the net square footage. It is just  
24 slightly under -- excuse me, slightly over the  
25 commercial. And -- but the gross square footage

1 numbers --

2 COMMISSIONER MAHAN: Well, we always deal in net  
3 numbers, right?

4 MS. KENNEDY: Yes. (Inaudible)

5 COMMISSIONER MAHAN: So I -- I assume that these  
6 in the -- on page 3 of six of the staff hearing  
7 officer report that these numbers are all net.

8 MS. KENNEDY: Yes.

9 COMMISSIONER MAHAN: In fact it says at the top  
10 of the column that they're all net.

11 MS. HUBBELL: Right.

12 COMMISSIONER MAHAN: 3436, 872, 888, 858, and  
13 872. I mean the question I get -- I think is -- is  
14 maybe not too significant except for that it may be  
15 that one of the condominium units doesn't get the  
16 exemption.

17 Want to get -- have you added them up?

18 UNIDENTIFIED MALE SPEAKER: No.

19 COMMISSIONER MAHAN: (Inaudible)?

20 MS. HUBBELL: We can't do the -- it's not -- it's  
21 the project as a whole that we look at. And I --  
22 actually I've re-added. You're right. The -- the  
23 square footage of A through D is slightly more than  
24 the commercial unit. And there -- that is --

25 COMMISSIONER MAHAN: So while it is a mixed, it

1 doesn't get the exemption.

2 MS. HUBBELL: Right.

3 COMMISSIONER MAHAN: Okay, well that answers that  
4 question.

5 Now, unless there's any more comment to  
6 that.

7 UNIDENTIFIED MALE SPEAKER: Well, what does that  
8 mean? (Inaudible) let's find out. What's the deal?

9 COMMISSIONER MAHAN: Yeah. So what does that  
10 mean? Well, it just means -- it means that we have to  
11 modify the parking, right?

12 MS. HUBBELL: Or reduce the size of the units.

13 COMMISSIONER MAHAN: Or reduce the size of the  
14 units, exactly. Okay. Well, that answer -- that  
15 answer -- that's -- that's a answer to the question.

16 Another question that I have is a question  
17 which I call the 50 percent rule. I know that -- that  
18 in dealing with residential remodelings, additions, we  
19 have this 50 percent rule thing where as if it's -- if  
20 the new construction is more than 50 percent, the old  
21 has to come up to -- to zoning. I can't find it in  
22 the ordinance, but I know we've -- that we've talked  
23 about it a lot, the 50 percent rule. Right?

24 MS. WEISS: The parking must be brought up. But  
25 what element --

1 COMMISSIONER MAHAN: No. No. No. No, in a --

2 MS. WEISS: Not everything about it --

3 COMMISSIONER MAHAN: No, in a -- in a -- in a --

4 in an existing house, existing house of -- in fact I

5 remember we were talking about some existing house,

6 and you were keeping track of it that over a certain

7 period of time it couldn't exceed 50 percent and -- or

8 else it had to be brought up to -- to code. In fact

9 my own daughter's house -- and I -- I look out there

10 and Rob was involved in this -- because the addition

11 was more than 50 percent of the existing house, we had

12 to bring the nonconforming garage into some kind of

13 conformance. And he's nodding --

14 MS. WEISS: That is correct.

15 UNIDENTIFIED MALE SPEAKER: Parking.

16 MS. WEISS: That's the parking needs to be

17 brought up to code. So I -- do you have a question

18 whether or not this project complies with the parking

19 in --

20 COMMISSIONER MAHAN: No. No, I thought -- I

21 thought that this applied -- I -- I'm -- the question

22 I'm asking is, is there a 50 percent rule for

23 construction? If -- if you add more than 50 percent

24 to a building, does the whole thing have to come up to

25 -- to Zoning Ordinance? That's the question.

1 MS. WEISS: Chair Jostes, no, not at all. In  
2 fact you can have a -- a nonconforming 800 square-foot  
3 dwelling some -- in some neighborhood of Santa Barbara  
4 and add a thousand square feet new as long as the new  
5 conforms.

6 We have changed the zoning standard  
7 throughout the community a number of times relative to  
8 setbacks. And at the time that that -- some early  
9 time that was done. I think the Council put a -- a  
10 good fairness clause in that says if your property is  
11 nonconforming you are not limited to make -- you are  
12 allowed to make conforming additions. And they -- it  
13 does not specify --

14 COMMISSIONER MAHAN: Okay.

15 MS. WEISS: -- a 50 percent rule.

16 COMMISSIONER MAHAN: Here I am almost ready to go  
17 off the Planning Commission. I'm still learning the  
18 rules.

19 Okay, well, those are my questions. Thank  
20 you.

21 MR. VINCENT: Mr. Chair?

22 CHAIR JOSTES: Mr. Vincent?

23 MR. VINCENT: Yeah, just to -- to add one point,  
24 though. I'm not sure -- you know, separate and apart  
25 from the parking requirement the -- in order to make

1 your findings to approve the tentative map today, you  
2 do need to find that the project is consistent with  
3 zoning. And that's -- and so if that answers your  
4 question from another direction. There are a lot of  
5 different things at play here, but one of the findings  
6 you must make is that the project is compliant with  
7 zoning. That's why you're seeing the modification  
8 request accompanying this project, to get a  
9 modification of the front yard setback in the SD-2.

10 COMMISSIONER MAHAN: And that has to come first?

11 MR. VINCENT: Yes.

12 COMMISSIONER MAHAN: In the sequence. I  
13 understand that. Thank you.

14 CHAIR JOSTES: Okay further questions.

15 Mr. White.

16 COMMISSIONER WHITE: I want to follow up on this  
17 50 percent residential and commercial. I'm -- where  
18 are -- where are we with that? Are we at where the  
19 residential has 3490 and the commercial has 3845? Is  
20 that -- is that what we're talking about?

21 COMMISSIONER MAHAN: 3436. The commercial has  
22 3436.

23 COMMISSIONER WHITE: 3436.

24 COMMISSIONER MAHAN: Well, that's what it was in  
25 the staff report.

1 CHAIR JOSTES: It was a 54-square foot  
2 difference.

3 COMMISSIONER WHITE: Oh, I see.

4 COMMISSIONER MAHAN: You see it?

5 COMMISSIONER WHITE: Well, 34 -- yes, okay. I  
6 was looking at the gross. Okay. So there really is  
7 just -- so then what do you see happening with -- are  
8 we going to get rid of a closet? I mean what -- how  
9 do you picture that unfolding from here? Staff?

10 MS. WEISS: This --

11 COMMISSIONER WHITE: You got 54 (inaudible)

12 MS. WEISS: There's only a limited number of  
13 options. One is to reduce the size of the  
14 residential. Another is to increase the size of the  
15 commercial. Or for the applicant to request a  
16 modification. They are before you on an exception,  
17 but that's a different matter.

18 COMMISSIONER WHITE: It is.

19 MS. WEISS: So this is new information apparently  
20 in the -- right now. Or perhaps the statistics and  
21 calculation on the original building permit plans were  
22 different. I don't understand why the -- the  
23 variation is here. But we're being -- we're using the  
24 information that's before us. And it appears to be a  
25 problem. It's --

1 COMMISSIONER WHITE: (Inaudible) problem.

2 MS. WEISS: -- either reduced -- yeah, reduced  
3 or --

4 COMMISSIONER WHITE: Thank you.

5 MS. WEISS: -- revised in some way or modified.

6 CHAIR JOSTES: I -- I think before we take action  
7 on this matter we're going to need to get some -- some  
8 clarity on that so that we know where the bounds are  
9 in this particular issue. Okay?

10 Seeing no other lights, I'm going to provide  
11 the applicant with an opportunity to address the  
12 Commission. Barring some new information that Mr.  
13 Kahan has joined the staff again --

14 MR. KAHAN: Excuse me. (Inaudible)

15 CHAIR JOSTES: I was hoping you could use --

16 MR. KAHAN: I needed support for my books.

17 CHAIR JOSTES: Okay.

18 (Interruption to approve prior minutes.)

19 MR. KAHAN: Would it be possible for us to take a  
20 break for about two minutes now?

21 CHAIR JOSTES: I'll -- I'll give you a -- a break  
22 for --

23 MR. KAHAN: One minute.

24 CHAIR JOSTES: Okay. And I'm going to ask you to  
25 remove your -- your materials here when you come back,



1 Mr. Kahan, in case Mr. Dayton needs to use that seat.  
2 I want to make sure we've got access for staff.

3 COMMISSIONER MAHAN: Mr. Chair, we can use this  
4 moment to approve the minutes.

5 CHAIR JOSTES: We could use this moment to  
6 approve the minutes. And why don't we -- pardon? We  
7 are -- we are not going to break. We are going to  
8 suspend our discussion of this -- of this ap -- this  
9 item for two minutes to consider one of the last items  
10 on our agenda, which is the adoption of --

11 Pardon me?

12 UNIDENTIFIED FEMALE: (Inaudible) motion for a  
13 change of (inaudible)

14 CHAIR JOSTES: Let's make it formal and move for  
15 a -- a motion to change the agenda item so that we --

16 COMMISSIONER WHITE: So -- so moved.

17 MS. JACOBS: Second.

18 CHAIR JOSTES: Okay. All in favor?

19 (All say "Aye.")

20 CHAIR JOSTES: Opposed? Motion carries.

21 COMMISSIONER WHITE: I move approval of minutes.

22 COMMISSIONER MAHAN: Second.

23 CHAIR JOSTES: We have a moval -- a moval -- a --  
24 a motion for the approval of the minutes and --

25 COMMISSIONER MAHAN: As corrected? The minutes

1 as corrected.

2 CHAIR JOSTES: -- the resolution as corrected.

3 Okay.

4 Any further discussion?

5 All in favor?

6 (All say "Aye.")

7 CHAIR JOSTES: Opposed? Abstain?

8 Motion carries. Okay. The amoval carries.

9 COMMISSIONER MAHAN: New word. You coined a new  
10 word, Mr. Chair.

11 CHAIR JOSTES: It's -- it's the opposite of  
12 removal. It's a moval.

13 COMMISSIONER MAHAN: A moval is the opposite of a  
14 removal.

15 (Resume Item No. III-B.)

16 CHAIR JOSTES: Yes.

17 Okay, we're going to bring ourselves back to  
18 the appeal at hand.

19 And, Mr. Kahan, you have 15 minutes.

20 MR. KAHAN: I'm going to try to place this into  
21 perspective right now and to make a few general  
22 comments.

23 I gather from the questions that have been  
24 asked people have looked at my letter. It has been  
25 submitted. It sums up a lot of legal argument.

1           A Commissioner that's not here today asked  
2 me to keep it to one page. I couldn't do it. And  
3 perhaps when he saw what I wrote, that's why he  
4 decided not to be here.

5           This is a bad project for a variety of  
6 reasons. It sticks out like a sore thumb on State  
7 Street. It is massive. It is large. There is  
8 nothing like it out there on State Street. For those  
9 of you that had the privilege of being on the site  
10 tour yesterday, Peter Ehlen is here, designed a great  
11 international design that's light, that would fit in,  
12 consistent with what's on State Street.

13           It's clear to me there's a zoning modifica-  
14 -- zoning violation here that slipped between the  
15 cracks, whatever happened. But why somebody elected  
16 to violate the law in a place that's so obvious in  
17 such an obvious way creates problems for me.

18           What also creates problems for me, this was  
19 not a bunch of amateurs. It was designed by Don  
20 Pedersen, who's a good architect. You're all familiar  
21 with the Sambo's conversion he did, the First American  
22 building and this nice light construction. Why it was  
23 massive there I don't know.

24           If you look at the properties on the  
25 adjacent side -- you've noticed I've raised the Design

1 Guidelines. It talks about setback and scale, comply  
2 with it -- well, the 7-Eleven setback, I guess roughly  
3 a hundred feet, something like it, one story. Your  
4 Choice, a Thai restaurant, has a driveway opening, and  
5 it's one story. It's set back. There's a separation.  
6 I don't know what it is, but it's definitely was a  
7 preexisting situation.

8 I put together -- I did a massive amount of  
9 research. Part of it's in that volume that I point to  
10 right there. And I think we have to understand this  
11 is a parking deficit area. I live in this area. I  
12 know what this area's like. And I know what happens  
13 here. A parking lot is not welcoming there. It is a  
14 drive-in thing. People go past it. They park at 7-  
15 Eleven.

16 Last night I had a call from one of the  
17 neighbors who lives on the street just north, and he  
18 said, "We don't like the parking on our neighborhood  
19 streets." And he emphasized the employees don't park  
20 there. And I've seen people walk from the 7-Eleven  
21 parking lot to go into the Century 21 building.

22 I think that we also have to understand this  
23 does not comply with the -- if it had come in -- if  
24 this weren't a two-step flip it wouldn't have complied  
25 with what would have been required for a condo. This

1 does not come anywhere near close to complying with  
2 the noise requirement. As I recall on the Berkus  
3 project, he said the noise had a rating of 70  
4 decibels. I've attached a copy of the noise report to  
5 the latest filing I made. And it looks -- and when  
6 you look at it -- and I quote from it -- he says, "You  
7 can't do the sound attenuation here because you create  
8 drainage problems and air circulation problems."

9 But to me, him saying 62.5 has not been  
10 challenged, I think this is noisier because he said  
11 this area was compounded by the street's stoplight and  
12 also the bus stop that exists there. And it's my  
13 guess it's closer to the street than Berkus's things.  
14 He had these, as you recall, hermetically sealed  
15 patios there that existed.

16 There's another reason it seems to me he  
17 couldn't have ever have gotten this approved as a  
18 condo. The plans, the way they're set up, what was  
19 built doesn't reflect the plans, and the plans, we  
20 don't know what the ABR really approved because all of  
21 the ABR plans were destroyed when I had a public  
22 records request out for the Lofts Project for this  
23 project. Why I file it you -- I'm (inaudible) January  
24 13th you see it in my chronology. And I attached a  
25 copy. On January 17th they were destroyed. I can

1 tell you by who did it. I don't know who ordered him  
2 to do it. And I don't understand why they were  
3 destroyed.

4 But it's been pointed out to me for condos  
5 you're required to have storage space if you don't  
6 have garages. I'm not aware of where the storage  
7 space in this. I think Commissioner White asked about  
8 removing a -- I think some -- a closet or something.  
9 This couldn't have complied with condos because it  
10 couldn't comply with the noise element which is part  
11 of the General Plan.

12 The other problems exist with it that it  
13 wouldn't have complied. I think that there's a real  
14 serious problem on a modification. I think you have  
15 to make specific findings for a modification here. I  
16 mean you have to find that it's consistent with the  
17 intent and purposes of SD-2. I specifically cite the  
18 section from SD-2 that establish the purposes.

19 I don't see how you can make that finding.  
20 I don't see how a unreasonable hardship finding can be  
21 made. Because it was a self-induced type of hardship.  
22 I don't know what the income is, but this should  
23 generate apartment income. This was a real estate  
24 broker that understands property and knew what he was  
25 doing.

1           And uniformity of improvement that's  
2 referred to, on that block there's no uniformity. You  
3 look at it. And the complaints I received from my  
4 neighbors, they -- what they say it's a nice building,  
5 but on a larger lot in a different area, maybe  
6 downtown Santa Barbara, maybe downtown L.A., maybe  
7 downtown Las Vegas. But it does not fit in Uptown.

8           I disagree with the City Attorney, as  
9 attorneys tend to disagree. The -- the Condo  
10 Conversion Ordinance does not say "zoning as  
11 modified." It says "zoning." Period. And to me what  
12 we're facing now and looking at is a two-step flip.  
13 You can make a lot of discretionary decisions. You  
14 can bend over backwards as we've seen with some of the  
15 numbers here. I don't think it complies with the law.  
16 This is one you can deny. If not, the word that's  
17 being passed on to developers is essentially saying  
18 you can do a two-step flip.

19           I disagree on the five-year thing. I could  
20 go into detail. We could argue for days about it. I  
21 could have written a hundred-page brief on it. One of  
22 the Commissioners was overheard to say at the last --  
23 at the hearing -- I think there was a problem. This  
24 was decided on the 19th of July. On the 20th of July  
25 this was brought for you to review under what I think

1 was a nonexistent section. One of the Commissioners  
2 said something -- and he can correct me on how he was  
3 quoted -- "I think we're going to get some black hairs  
4 on our nose because of the approvals today," or  
5 something to that effect somebody told me he said. He  
6 didn't tell me.

7           And I think when I thought about it this  
8 morning, I said -- visiting my mother, and I started  
9 remembering when I was a child and going to the  
10 kitchen. And she's a great cook and the great smells.  
11 And if it didn't smell right, something was wrong and  
12 she'd look at it. Well, that brings this project to  
13 me. And the way I would describe it, this does not  
14 smell right. It does not pass the smell test. It  
15 does not pass it how the modification was given,  
16 ignored in here. Because I know what they go through  
17 reviewing modifications and the standards that are  
18 applied. You saw it earlier today when a modification  
19 was denied, built within an existing building, what  
20 they were doing.

21           Here in the most obvious place -- people  
22 don't see Flora Vista what was going to be done here.  
23 This is ignored. The records are destroyed. They  
24 don't require the things within the plans to be built  
25 as the plans show. The landscaping was not put in



1 here. Instead the owner paved it over and parks his  
2 car there.

3 Now, I needed architects to evaluate this  
4 for me. A person who's very important on the ABR told  
5 me, "Why didn't this ever come to ABR for review for a  
6 condo conversion?" We apply different standards to  
7 condos, design standards, the parking, and a whole  
8 bunch of other things.

9 Well, I'll let somebody else explain that.  
10 But this is one thing I would ask. Another exception,  
11 it adds to flunking the smell test. Well, if there's  
12 a little odor emanating from a project, you say maybe.  
13 But there are so many questions that have been raised  
14 by the exceptions. You saw it today, the calculations  
15 on the 50 percent that I raised in my paper. But Mr.  
16 Mahan put it together better than I could. He  
17 analyzed it. Gil Barry's analyzed these plans.

18 Another architect, prominent architect,  
19 looks at them and said the plans, the so-called  
20 approved plans, we don't know what the ABR really did.  
21 Here we have these digital minutes. What we've seen  
22 is something that isn't built to the proportions that  
23 are shown on the plans.

24 Now, I'm not an architect, but when -- one  
25 architect that I greatly respect points that out to

1 me. He points out other things that weren't done,  
2 little things. I -- somebody else can look at it.  
3 There's no caps on the chimneys that were pointed out  
4 here -- that were put on here and placed upon here.

5 I could go on and write a hundred-page thing  
6 -- I could talk for hours on this. And I asked myself  
7 how far do I have to go to point out this is a time  
8 for you to exercise your discretion and say we don't  
9 have to do the two-step flip here. We aren't  
10 compelled to do it. This is one we aren't going to do  
11 it. When somebody does this and we know that he  
12 applied for the condo conversion three weeks -- as  
13 I've shown in what I filed -- three weeks after he got  
14 his building permit, there's no question this was  
15 intentionally done in my mind.

16 I could ask a lot of other questions, but  
17 the bottom line, it just doesn't pass the smell test.  
18 And as I said to you before, to me we all agree the  
19 law should be obeyed. We are disappointed, a lot of  
20 us, that it isn't enforced the way we would like it,  
21 but we understand there's limited resources. But I  
22 would hope to god we all agree that people that  
23 violate the law, both in its letter and spirit, should  
24 not be rewarded. And that's what would happen. With  
25 condo conversions they would -- these would be sold.

1           I thank Bettie for discussing what the  
2 Council did this week earlier. They discussed the  
3 importance of maintaining apartment housing. I think  
4 Commissioner Jacobs mentioned it also. And for us to  
5 create more market rate housing here when we need  
6 rental housing -- and this situation would give a bad,  
7 bad message to developers.

8           Now, whatever little time I have left I  
9 would like to reserve to respond to any other  
10 questions that are raised.

11           And I do not want to get in a legal argument  
12 here discussing that. That can be done somewhere else  
13 in another forum. But to me it would be -- I would be  
14 greatly disappointed if what happened here at the  
15 Planning Commission would sanction it in any way. It  
16 should -- it should give a clear message we do not  
17 approve this. And then we can worry about what level  
18 of enforcement's going to happen later.

19           As I noted in my letter, the City Attorney  
20 has said they can apply for a modification when they  
21 get a condo conversion. And Danny Kato said the City  
22 Attorney's decided he's not going to prosecute this  
23 one. Well, there's violations on the building that  
24 don't comply with the plans, and there's a lot of  
25 other places you could start here.

1           And I will reserve the last three minutes  
2 and 30 seconds, if I may.

3           And I thank you for your courtesy. And I  
4 thank you for reading what I submitted.

5           CHAIR JOSTES: Thank you, Mr. Kahan.

6           At this point in time I would like to  
7 provide the applicant with an opportunity to address  
8 the Commission.

9           MR. TABOR: Chairman Jostes --

10          CHAIR JOSTES: Mr. Tabor.

11          MR. TABOR: -- members of the Planning  
12 Commission. First off, the applicants apologize for  
13 not being able to be here today. They had to  
14 rearrange their schedule around a hearing date of last  
15 month. I believe it was on the first Thursday of  
16 October. And one of the applicants mother's birthday  
17 on the East Coast took precedence over this meeting.  
18 So I just wanted you to know where you stood in the  
19 hierarchy of things here.

20                 I want to first give a portion of my time to  
21 talking about the appeal process itself. I was glad  
22 to hear the City Attorney mention following court  
23 procedure, but I don't think there's -- there's very  
24 little about the appeal process that follows typical  
25 court procedure. There's no question of standing of

1 the appellants. Of the question of the -- the timing  
2 I think is usually pretty clearly stated, especially  
3 when you have a code that was approved in 2006. So if  
4 there had been a typical procedure and you had a  
5 chance to update the code just this year to stipulate  
6 how appeals come in, I think that way you would have  
7 taken the opportunity to do that.

8           The other very glaring problem here is that  
9 there are really only two -- two requirements for  
10 filing appeal. One, (inaudible) you file within ten  
11 days of the date of the action, and two, that they be  
12 accompanied by a letter stating the grounds for  
13 appeal. Well, we saw the letter. It came in twelve  
14 days after the action. And it was a two-page letter.  
15 Tuesday I'm handed another letter that's -- I don't  
16 know, I didn't count the pages, but it was not so much  
17 an appeal as it was an ambush.

18           So I have to apologize for being a little  
19 scattered in my approach today in trying to touch on  
20 all the points that were raised. But and if we were  
21 following court procedure, I don't think I'd have to  
22 do that today.

23           Responding to the appeal, getting beyond the  
24 defamations of character and accusations of nefarious  
25 dealings, I want -- first have to say I'm not -- I'm

1 not that good a planner to do everything that Mr.  
2 Kahan implied that was -- was done on this project.  
3 And I -- I wouldn't violate the American Institute of  
4 Certified Planners Procedures and -- and of Rules of  
5 Conduct to do so.

6           The applicant was basically a victim of some  
7 bad advice from an insurance advisor here. It had  
8 always been their intent to build new condos on this  
9 -- on this property. They first contacted me about  
10 the opportunity to do so. And it seemed like it was a  
11 perfect opportunity to do so and since the City was  
12 encouraging applications for new mixed-use projects.  
13 They had an excess of parking. They had -- could add  
14 a second story there easily within the Zoning Code.  
15 So my advice to them was to -- to go for it.

16           Shortly thereafter they heard from their  
17 insurance advisor that, no, they couldn't afford the  
18 insurance for condos. So just go ahead and build them  
19 as apartments. And very shortly after that we're told  
20 that was not -- not the way to go, that they were  
21 given some bad advice there. So they quickly tried to  
22 come back in and then reinstitute that application.

23           And it -- it does appear as -- it is a two-  
24 step process. There is no doubt about that. But I  
25 think the code as you were -- it was explained to you

1 by staff, does provide for that. And the -- the  
2 loophole that was closed in 1992 was that folks had  
3 discovered that you could build a building to one set  
4 of standards, which was the condo conversion  
5 standards, which were down here and the new condo  
6 standards that were up here.

7 Well, this building was always designed as a  
8 new condo and met the language in the code which says  
9 as long as they're built to new condominium standards  
10 they can come through within that five-year window.  
11 So they were allowed to do so.

12 And I think the focus here today of my  
13 comments should be to -- to have you look at the  
14 findings that are necessary to approve a condominium  
15 conversion as listed in the staff hearing officer  
16 report. The provisions of the chapter are met. The  
17 -- it's consistent with the General Plan and all of  
18 its provisions. I think if you're familiar with the  
19 Land Use Element, the Housing Element, the Circulation  
20 Element, you'll see that this project has stepped up  
21 and tried to be a good citizen and meet -- meet all  
22 those -- all those standards.

23 With a modification it does meet the Zoning  
24 Code. The overall design and physical condition of  
25 the conversion result in a project that's

1 aesthetically attractive, safe, and of quality  
2 construction. Again, that provision is added in the  
3 Condo Conversion Ordinance where you typically see an  
4 older building that's attempted to be covered here  
5 with a brand-new building. I'm not sure that that  
6 fully -- fully applies to this project, but I -- I --  
7 it's hard to argue against it.

8           And all the other conditions in there deal  
9 with tenant protection measures. And since all the  
10 tenants here came after the fact, they were notified  
11 that the project that we're in was eligible or was  
12 under consideration for conversion, and indeed they  
13 were offered a opportunity to participate in a rent-  
14 purchase type of agreement.

15           Dealing with the points in the appeal  
16 letter, starting with item 3. It's entitled  
17 "Statement of Facts." Don't really see how it does --  
18 much to do with the current application. It just  
19 raised several red herrings about differing numbers in  
20 the previous applications. And as you go through the  
21 process number -- numbers do change.

22           Of note in the earlier conversation and  
23 questioning period, what I was told when originally  
24 coming in to check what the new condominium standards  
25 were here was that the -- the section of the code that



1 deals with mixed use says that the residential portion  
2 occupies less than 50 percent of the overall square  
3 footage. So -- or the overall area. So it was no --  
4 it was told to me that this was a gross -- the gross  
5 calculation. And therefore our plans very  
6 specifically pointed out that -- the gross of one  
7 versus the gross of the other and the residential is  
8 less in that consideration.

9           The comments regarding the context of the  
10 building and -- and its place in upper State Street I  
11 don't think are applicable to the current application,  
12 dealing with the appeal letter point No. 4.

13           Zoning requirements, I think what we have in  
14 this consideration is the ABR Guidelines are very  
15 specific on additions. I think a problem is that  
16 someone tries to put an addition on a building and not  
17 touch the old portion of the building and just get  
18 away with fancying up the new portion. And it's a key  
19 provision in the -- in the ABR Guidelines that you  
20 need to wrap that new style -- choose a style and wrap  
21 it all the way around the building. And I think  
22 that's what we have -- that's what happened here.

23           It's an aesthetic issue. It's -- in order  
24 to have the new portion of the building, which I think  
25 in Mr. Kahan's chronology was a chicken restaurant, in

1 order to have that chicken restaurant match the  
2 quality of the new construction, the decision was made  
3 to extend the eaves out three feet -- that's as they  
4 were done around the rest of the building -- and  
5 imitate the support columns that were used in other  
6 portions of the building along the front. So the  
7 total area covered by that eave overhang is 290 square  
8 feet. And I think you can easily see the benefit to  
9 the architecture of extending the eaves out, which in  
10 the opinion of the staff hearing officer was necessary  
11 to secure an appropriate improvement on the property.

12           If you take that three-foot eave extension  
13 off the front of the building, which was back to where  
14 the existing wall was, I think you're left with a --  
15 with a 1959 chicken restaurant in the front, which I  
16 don't think is what anyone wants to see up there,  
17 especially the applicant.

18           The point about development plan review I  
19 think was covered. That only applies to new  
20 nonresidential square footage.

21           I think I commented on the two-step process  
22 before, so I won't cover that next point.

23           There was a comment related to a question  
24 earlier about the rental review received at a lower  
25 standard. And I think Ms. Weiss touched on that a

1 little bit in her response there. But my experience  
2 in looking at the ABR aspect of review of the project,  
3 there is no lower standard for -- for any project that  
4 I -- I see coming through the process, whether it's  
5 rental or ownership units. So I -- I have some  
6 disagreement with that -- there have been being a  
7 lower standard of design review for this project.

8           The noise element is one that does come up  
9 when you look at the wording in the General Plan. And  
10 we have a little bit of a Catch-22 there. We are  
11 required to have outside patios. There are outside  
12 patios there. The only way to not have a -- a reading  
13 over 60 -- and we're 62.5 on the one reading that was  
14 taken -- the only way not to have that -- have to go  
15 below 60 is to totally enclose the outdoor areas along  
16 the front of the building.

17           So we could have greenhouse spaces out  
18 there. But according to the definition I have of what  
19 is outdoor and indoor space, that wouldn't qualify any  
20 longer as outdoor space.

21           And the interesting note made by staff also  
22 was that our sound analyst said, well, if the bus stop  
23 was not in front of the building, the noise would go  
24 below 60. So we have an applicant here -- again, it's  
25 a little bit of a Catch-22. They very willingly gone

1 along with the location of the bus stop there for a  
2 long time. They have put up with the -- the clutter  
3 and the trash along the front of the building. They  
4 very willingly went along with the condition to  
5 provide a bus bench and a trash can and a sign out  
6 there. And to be punished for the location of the bus  
7 stop in front of their building I think is unrational.

8 I think the other point interesting to note  
9 is the -- again, the building is there, and the City  
10 policies of not applying the standard to rental and  
11 applying it to condos kind of breaks up a little bit  
12 of a class distinction. It's okay for renters to live  
13 in one area where it's not okay for -- for owners to  
14 live in -- in some areas. So I think busting through  
15 that somehow is a key point here.

16 And it's interesting to note, regard that,  
17 that the last census figures show that there are more  
18 people per average living in rental situations than  
19 there are in ownership situations. So if you use  
20 that, the rationale will be fewer people exposed with  
21 a conversion than there would be if there -- it was  
22 stayed as rental.

23 The other point regarding the noise too is  
24 measurements were required to be taken during the a.m.  
25 rush hour, which has the most number of buses and the

1 most number of cars going past the -- past the front  
2 of the building. The levels are -- are five dba lower  
3 in the evening and ten dba lower at night, so the time  
4 when occupants are most likely to be there we will be  
5 at that below 60 range. But that's not noted in the  
6 -- in the report.

7 I think I covered that.

8 I think the parking question, too, is one  
9 that the mixed use standards covers if we are -- we  
10 have one space per unit covered for each residential  
11 unit provided. And there are 14 additional units on  
12 site.

13 One question earlier about there previously  
14 being 21 parking spaces listed on the plan, the  
15 original project had a number of additional parking  
16 spaces around the perimeter of the project site. And  
17 this project was approved with -- as apartments with  
18 one more parking space. But during the review for a  
19 condo conversion there was a parking space at the east  
20 front of the project where there's currently a  
21 landscape area. That was taken out of the plans to,  
22 again, provide for additional landscape coverage.

23 There was a question about there being  
24 inadequate landscape coverage. Ten percent of the lot  
25 area is required. We provide, per the language of the

1 code, 14.8 percent. We are not allowed to count the  
2 landscaping planters in the front of the project as  
3 part of the code requirement for open space. But if  
4 you add those in, it brings our total up to 18.- --  
5 18.3 percent of the total lot area. So either way we  
6 provide more than the -- the limit -- or the minimum  
7 allowed in the -- in the Condo Conversion Ordinance  
8 where there are three standards.

9 CHAIR JOSTES: Mr. Tabor, you have about a minute  
10 and a half left.

11 MR. TABOR: Okay. The project does not conform  
12 to plans. He was very nonspecific about what there,  
13 except to mention chimney caps. And I think columns  
14 were mentioned in the report. I spent 15 minutes  
15 going up to the building with a tape measure and  
16 measuring the columns, and they are indeed built to  
17 the drawings on here. The front columns were drawn at  
18 quarter inch -- on a quarter-inch scale, which means  
19 they should be 12 inches wide. And the side columns  
20 were drawn at two quarters of an inch, which means  
21 they should be two feet wide. And they're exactly  
22 that width. So that's the only -- I couldn't get up  
23 on the chimney to see if there are chimney caps up  
24 there, but there are -- if there are anything else  
25 that is negligent in that regard, the applicant would

1 be glad to bring those up when the -- when the  
2 conversion permit is approved.

3 I urge you to reject the appeal and endorse  
4 the findings of the staff hearing officer in this  
5 case.

6 Thank you.

7 CHAIR JOSTES: Thank you, Mr. Tabor.

8 MR. TABOR: I'd be glad to answer any questions  
9 you have.

10 CHAIR JOSTES: Okay.

11 COMMISSIONER MAHAN: I have a question.

12 CHAIR JOSTES: Mr. Mahan has a question of -- of  
13 Mr. Tabor. And let's -- let's take Mr. -- questions  
14 for Mr. Tabor first and then questions for Mr. Kahan  
15 following that.

16 COMMISSIONER MAHAN: Okay, could you -- could you  
17 clarify the -- the issue of the storage? Is the  
18 storage provided for the condominium units?

19 MR. TABOR: Storage has not be constructed as of  
20 this date. There were a number of those type of  
21 items, in addition to the landscaping area in the  
22 front portion that was noted that it's paved over.  
23 Since there were a couple items like that remaining,  
24 the applicant made the decision to try to take care of  
25 all those at once at the end of the process rather

1 than have somebody come back continuously to pick up  
2 those (inaudible).

3 COMMISSIONER MAHAN: Where -- where are you --  
4 where are you anticipating that that's -- what is --  
5 how much storage is it per condo unit?

6 What?

7 MS. WEISS: Is it 300 cubic inches?

8 MR. TABOR: 300 cubic feet.

9 MS. WEISS: Oh, feet. Excuse me.

10 COMMISSIONER MAHAN: 300 cubic feet. 300 cubic  
11 feet per unit.

12 MR. TABOR: You were on the site visits. You  
13 remember where the stairwells are that go up to the  
14 second story on each side.

15 COMMISSIONER MAHAN: Yeah.

16 MR. TABOR: There's -- they are approximately  
17 three feet wide. So there's an offset behind those on  
18 either side. Since the two parking spaces for each of  
19 the units are on opposite sides of the building, it's  
20 decided to put the storage where the parking spaces  
21 for the unit are right along the building behind the  
22 stairways.

23 COMMISSIONER MAHAN: Thank you.

24 CHAIR JOSTES: Other questions for Mr. Tabor?

25 Mr. White.



1 COMMISSIONER WHITE: Thank you, Mr. Chair.

2 Of staff, is there a -- there is a -- the  
3 one difference I'm hearing about is, on rental units  
4 versus condos, the outdoor space doesn't need to meet  
5 the 60 db requirement? Or do they not both need to  
6 have the 60 db requirement?

7 MS. WEISS: We've spent quite a bit of time  
8 looking at noise issues lately. Again, it's important  
9 to realize that residential development within the  
10 City of Santa Barbara happens through a variety of  
11 permitting processes. Some are actually just building  
12 permits. Not very many, but some residential  
13 projects, you know, they just obtain a building  
14 permit. Many go through design review. And that's  
15 discretionary requiring environmental review. And  
16 then many go through additional discretionary land  
17 use, such as staff hearing officer and Planning  
18 Commission.

19 The level of analysis done at each step is  
20 greater. So it is possible that there are permits and  
21 construction going on along the noisier corridors of  
22 the city, such as the railroad corridors, heavily  
23 traveled streets where we have existing residential  
24 development as well as improvements to residential  
25 that may exceed the City's standard.

1           The City has a noise contour map. And that  
2 map is consulted at the time of building permit.  
3 Building and Safety staff ensure that the interior  
4 noise levels are met. The Planning staff consults the  
5 -- the contour map to look at both interior and  
6 exterior. But again, that level of review increases  
7 as the -- the discretionary review process.

8           So what happens at ABR is if a project is  
9 within the -- is it above 65? Or above 60, Jan? --  
10 above 60 shown on the contour map, the ABR staff  
11 should request a noise study. They don't always. We  
12 have had this as an issue. This is a case in point.  
13 The planning staff preparing for a Planning Commission  
14 review is more accustomed to this study, that study.

15           And so again, that's where I'm in agreement  
16 that what happens when you go to ABR in a two-step,  
17 it's not the same level of review that happens. So  
18 that is indeed what happened here.

19           Now, in order to be consistent with the  
20 General Plan -- and I don't know if the staff provided  
21 the table. Did you provide the table as an attachment  
22 here?

23           It's important to look at the Land Use  
24 Element as to what is a minimally acceptable,  
25 sometimes unacceptable. There are these different

1 ranges of noise. Between 60 and 70 we have a number  
2 of land uses that are allowed. And that is found  
3 either acceptably -- acceptable or usually acceptable.  
4 Anyway, this is 2.5 dba above, which is hard to even  
5 discern the difference between. So staff felt you  
6 could find this consistent with the General Plan.

7           So that's the recommendation on the noise  
8 issue.

9           COMMISSIONER WHITE: And Mr. Chairman, but the --  
10 to back up on that, the cond- -- if these were -- came  
11 in -- and I -- you did answer that in that -- what  
12 Senator Kerry would have said, it's the longest answer  
13 to a yes or no question I ever saw, that the 60 db  
14 requirement for a -- just came in applying for condos  
15 would have gotten -- as you say, there's a -- this --  
16 customarily this staff and so forth would have been  
17 going, "Okay, checklist, 60 db," would have kind of  
18 been looked at more front line; whereas this one, this  
19 came through as a rental. It -- it is looked at a  
20 little more relaxed. You just see the contour lines.  
21 It wasn't -- it wasn't in the railroad tracks. It  
22 wasn't in the kind of scary zone or the awful zone.  
23 So it -- it got below the radar.

24           Thank you.

25           CHAIR JOSTES: Further questions of Mr. Tabor?

1 Any questions for --

2 Thank you, Mr. Tabor.

3 Any questions for Mr. Kahan?

4 I have one, Mr. Kahan. And you -- I looked  
5 at the noise study that you had attached to your  
6 appeal packet, and I -- I saw numbers in the 62.5  
7 range. And -- and you had mentioned a -- a number a  
8 little bit higher than that. And I was curious as to  
9 how --

10 MR. KAHAN: Okay. But I would understand -- and  
11 I don't -- didn't have time to look it up -- is that I  
12 understand that Dudek, I think, did a study for Barry  
13 Berkus for the Lofts Project. And as you know, I know  
14 that one pretty well. But Gil Barry can address it  
15 perhaps more specifically. And as I recall they tried  
16 to establish a standard of 70 decibels.

17 Now, one or two things I comment on. Number  
18 one, it was a -- I think was Morris Engineering. I  
19 don't know who they are. They did their measurements.  
20 I don't understand the measurements. I would have  
21 liked an independent evaluation. And he emphasized it  
22 was complicated by the bus stop and stop sign, which  
23 didn't really exist in front of the Lofts Project.  
24 And what this relates to is my recollection, because I  
25 remember the discussion of I think Mr. Berkus

1 described how he was going to seal the thing in and  
2 the glass was going to be in the front. And it was  
3 because of his 70 was a determination.

4 This is another one of the things I  
5 mentioned before and what relates to the ABR review.  
6 If there had been a full review, they could have moved  
7 the building farther back, put the patios in the rear,  
8 you know, so they wouldn't get the noise, because you  
9 have one unit doesn't have the problem. This could  
10 have been designed to preserve the views and to  
11 address the sound issues. And one of the problems is  
12 you build the thing and address the sound issues  
13 later.

14 Secondly, I saw a printout in the file when  
15 I did it relating to the sound decibels. That's what  
16 clued me in. And I tried to get a copy of the Noise  
17 Element. They didn't have one. I looked at that.  
18 There they talk about the violation of state law,  
19 secondly.

20 And this is the kind of thing that  
21 environmental analysts should have looked at. And my  
22 public records request I specifically filed a  
23 supplemental request and I asked where is the -- are  
24 the environmental analyst's notes, this unknown  
25 environmental analyst who looked at this? Where did

1 she sign off or he sign off on it?

2           And the record supervisor there sent me back  
3 an e-mail where she responded to my questions. And  
4 I'd like to submit this in the record, where the  
5 environmental records on this have been destroyed  
6 also, the analysis.

7           And it goes again, another question. Oh,  
8 we've got to look into that. Another question. And  
9 they just go on.

10          CHAIR JOSTES: Okay, I --

11          MR. KAHAN: I wish I could answer your question  
12 more specifically.

13          CHAIR JOSTES: I think you're going -- you're --  
14 you're -- you're doing what Mr. -- Mr. White has  
15 suggested and taking a few more words than we need to  
16 answer the question.

17          MR. KAHAN: Yeah, I --

18          CHAIR JOSTES: I appreciate the context that  
19 you --

20          MR. KAHAN: Yeah, I don't have the answer is what  
21 I should say.

22          CHAIR JOSTES: Okay.

23          MR. KAHAN: And I'll give these to Ms. Hubbell  
24 that she can distribute.

25          CHAIR JOSTES: Okay. At this point in time I'm

1 going to open up the public comment period on this  
2 project. And it looks like we have seven or eight  
3 speaker slips here. We typically provide for three  
4 minutes for each member of the audience to address the  
5 Commission.

6 Our first speaker is going to be Mickey  
7 Flacks to be followed by Michael Self.

8 MS. FLACKS: Good afternoon. I know very little  
9 about the architectural details of this project. What  
10 I do know about is the two-step flip. And I'm here to  
11 urge you to not, as Mr. Kahan said, not reward the  
12 applicant for going through a process which wasn't in  
13 fact -- was in fact an evasion of the present law. It  
14 was developed as apartments to take advantage of  
15 lesser review regulations, as we've heard.

16 In the News-Press story on this development,  
17 the owners are quoted as saying that they planned to  
18 put all the units up for sale as condos. While they  
19 wait for City approval, they're offering the units for  
20 lease. Now, if they planned to put the unit up for  
21 condos, why didn't they build condos? Why didn't they  
22 come to the City forthrightly and say, "We're building  
23 condos," instead of building apartments up for lease?

24 Something is wrong with the law that makes  
25 this kind of evasion possible. And it should not be

1 -- people who take advantage of it should not be  
2 rewarded. Clearly the City Council is about to change  
3 this, tighten this loophole. And I've heard the City  
4 Attorney or -- or the staff say, "Well, but they can  
5 slither through this loophole," or words to that  
6 effect, they can slither through this loophole before  
7 it gets closed. I don't think you should permit them  
8 to do that.

9           In terms of what Mr. Tabor said, that there  
10 seems to be a class distinction between condos and  
11 rentals, condos clearly stimulate their purchase,  
12 given the price, by higher income people. Computer  
13 models have shown that continuing to condomize this  
14 community will drive lower wage working families out  
15 of town. They will not be able to afford the prices  
16 of condos. If condos are built instead of apartments,  
17 they will not have apartments to live in. And if  
18 apartments are permitted to condoize in this evasion  
19 of the law kind of way, we face even additional  
20 problems.

21           And one other note on the appeal's timing,  
22 as one who has been subject to this. Yes, indeed,  
23 it's ten days. And you get an extra day if there's a  
24 weekend. But since the Planning Commission meets  
25 routinely on a Thursday and the ten days would involve



1 two weekends at all times, the first weekend and then  
2 the second and then the letter of the appeal could be  
3 filed on Monday, I think it would be much fairer if it  
4 were stated to be a ten-working-day approval time --  
5 awaiting time rather than ten calendar days. I think  
6 we'd avoid a lot of problems if we change that.

7           So we have laws and rules and regulations  
8 that need changing. Let's change them and not reward  
9 those who evade them.

10           Thank you.

11           CHAIR JOSTES: Thank you, Ms. Flacks.

12           Michael Self to be followed by Naomi Kovacs.

13           MS. SELF: Thank you Commissioners, for this  
14 opportunity to speak. My name is Michael Self. And I  
15 was at last Council's meeting, and they were  
16 addressing this loophole. And they felt that it was  
17 an abuse of the Planning Guidelines, which allows this  
18 kind of thing to happen. And the City does recognize  
19 that we really do need rental housing. And so we hope  
20 that you support the appeal.

21           The staff report showed how the rules and  
22 regulations can be manipulated for this sort of thing.  
23 We all hope for a good faith process. And I think Jim  
24 stole my line because I had written here "It doesn't  
25 pass the smell test." So I agree with that totally.

1           Also, the staff, I thought it was  
2 interesting that they kept using the word "existing."  
3 Now, that's a word that also got stretched in this.  
4 An existing project that had only been approved three  
5 weeks prior and now we're going for the condo  
6 conversion? That -- that seems a little too  
7 coincidental. And so I think that it does show that  
8 there was some sort of, oh, using of the system that  
9 was required.

10           And I know many of you who have kids, how we  
11 come down on kids when they start to take the system  
12 and twist your words and "I didn't mean this, I meant  
13 that." And clearly if you've been through that  
14 process of child rearing, you can see through those  
15 tactics.

16           And thank you for your time.

17           CHAIR JOSTES: Thank you, Ms. Self.

18           Naomi Kovacs to be followed by Paul Hernadi.  
19           Ms. Kovacs.

20           MS. KOVACS: Good -- good afternoon,  
21 Commissioners.

22           I am Naomi Kovacs, executive director of the  
23 Citizens Planning Association. And I'm here today  
24 because our Land Use Committee strongly supports the  
25 appeal before you. We believe that more public input

1 and full Planning Commission deliberation is needed to  
2 evaluate a number of the approval's implications.

3 First, the staff hearing officer's approval  
4 was granted and is being appealed at a time when  
5 Planning Commission and City Council are refocusing on  
6 the need to protect the City's stock of rental housing  
7 against the increasing number of condo projects that  
8 propose to demolish or convert rental properties.

9 The case in question is specially  
10 objectionable because the proposal is to convert very  
11 recently completed apartments that were approved by  
12 the City under policies and procedures applicable to  
13 rental properties. This is a two-step flip if we've  
14 ever seen one.

15 As others have stated, if you deny this  
16 appeal and uphold the staff hearing officer's  
17 approval, you will be rewarding the development  
18 proposal's piecemeal strategy and two-step flip.

19 Second, the staff hearing officer's approval  
20 entailed an irregular retroactive approval of a major  
21 front-back mod- -- front setback modification. Excuse  
22 me. We note that the now existing two-story building  
23 was approved in 2004 without the benefit of a needed  
24 modification to allow encroachments into the required  
25 front yard setback. Such an oversight may not have

1 occurred if the original application had been for  
2 condos rather than apartments.

3           Furthermore, the more intense scrutiny  
4 usually given to condo applications may have led to  
5 objections concerning the project's size, bulk, and  
6 scale, thereby preventing the resulting now existing  
7 blockage of significant mountain views from the  
8 popular bus stop directly across the street.

9           Third, if approved, the requested parking  
10 modification to allow for shared use of the available  
11 space may aggravate the Uptown commercial parking  
12 shortage and may preempt implementing possible  
13 recommendations of the current upper State Street  
14 Study and Improvement Plan about parking policies for  
15 mixed-use projects.

16           Lastly, we wonder if the staff hearing  
17 officer is authorized to hear a case which involves  
18 the conversion of a total of five condo units, even if  
19 one of the condos is commercial. And we'd appreciate  
20 it if the City Attorney would clarify this and perhaps  
21 read aloud the full language of the specific sections  
22 of the Municipal Code.

23           Thank you. We appreciate your  
24 consideration.

25           CHAIR JOSTES: Thank you, Ms. Kovacs.

1           Mr. Hernadi to be followed by Cheri Rae  
2 McKinney.

3           MR. HERNADI: Thank you, Chair Jostes, Planning  
4 Commissioners.

5           I would like, first of all, to just express  
6 my complete concurrence with the CPA statement that  
7 you previously heard and elaborate on two points in  
8 it.

9           One is as a bus rider, I would like to  
10 mention that two bus stops are very adversely affected  
11 by the lack of setback and the height of the building  
12 on the north side of State Street. The bus stop  
13 opposite used to have a fantastic view of the  
14 mountains, which is now completely blocked by the very  
15 massive building. And the bus stop on the side of the  
16 building has its bench practically on the bike path,  
17 very close to the roadway as a result of the lack of  
18 proper setback, because the sidewalk is very narrow  
19 and the bench is really in a very uncomfortable  
20 position.

21           The other point you have heard a lot about  
22 is the two-step flip. And I watched the City Council  
23 meeting the day before yesterday, and it's very clear  
24 that the -- this loophole in the law will soon be  
25 abolished. So with a project with so many problems

1 and modifications and lack of compliance with the  
2 General Plan without the modifications, et cetera, et  
3 cetera, I hope that you will not give in to the  
4 temptation of why not let one go through before the  
5 law changes, but rather apply very strict standards on  
6 every count that the law now invites you to apply.

7           Because basically whether it will be a five-  
8 year or a fourth-year rule against flipping from an  
9 apartment application to a condo conversion, the  
10 situation reminds me very strongly of the question  
11 what is a decent interval if somebody's spouse dies to  
12 start dating? And of course you can think of five  
13 years or five weeks or five months or whatever, but  
14 certainly applying for the condo conversion before the  
15 first -- before ground is broken seems to me like  
16 start dating while your spouse is still on her or his  
17 death bed.

18           Thank you.

19           CHAIR JOSTES: Thank you, Mr. Hernadi.

20           Cheri Rae McKinney to be followed by Gil  
21 Barry.

22           MS. MCKINNEY: Good afternoon. Thank you for the  
23 chance to speak with you today.

24           The County-State mandated ethics training  
25 course states good government requires the people have

1 confidence in the integrity of its government. That  
2 confidence is bolstered when our public officials and  
3 employees demonstrate a respect for order, precedent,  
4 and plain meaning.

5           This particular project raises many concerns  
6 about whether the people can reasonably enjoy such  
7 confidence. Clearly in the granting of many  
8 modifications the curious destruction of documents  
9 when a public records request was in place, and the  
10 obvious attempt to sneak a condo conversion through  
11 the proper process, this project is not an example we  
12 would want to see emulated throughout the city.  
13 Unfortunately, it has taken the efforts of a private  
14 citizen to bring these issues forward when it should  
15 have been done properly in the first place.

16           We must uphold the policies, procedures,  
17 rules, and requirements that are supposed to apply to  
18 each and every applicant. In this and other projects  
19 with which I am familiar there is a serious process  
20 problem going on here. The cumulative effect of the  
21 errors, inappropriate decisions, and what appear to be  
22 outright violations of policy are undermining the  
23 integrity of our city's government and planning  
24 process and the public's rightful confidence in it.

25           I urge you to do the right thing and uphold

1 the appeal.

2 Thank you.

3 CHAIR JOSTES: Thank you, Ms. McKinney.

4 Mr. Barry to be followed by our last  
5 speaker, Mr. David Landecker.

6 Mr. Barry.

7 MR. BARRY: My name is Gil Barry. I reviewed the  
8 plans and visited the site. The area in square feet  
9 of the residential units appears not to have included  
10 the stairwell on the (inaudible) -- I mean the  
11 stairwell and the elevator on the first floor. The  
12 stairwell and -- going up to the residential units and  
13 the elevator going up to the residential units are not  
14 part of the commercial unit. They are part of the  
15 residential project. If you add -- if you deduct that  
16 from the commercial, add it to the residential, you  
17 might have a 60 percent residential and 40 percent  
18 commercial.

19 So it does not apply with the law; therefore  
20 it cannot be approved without a modification.

21 Now, regarding the sound, I was involved in  
22 the Berkus Lofts appeal, and I read that particular  
23 sound report. And those units were very similar to  
24 these units in terms of the relationship to State  
25 Street. And my recollection is that that professional



1 sound report said that those units would be subject to  
2 70 decibels coming from State Street. This report  
3 says 62.5. And I don't mean to question the report,  
4 but that's quite a bit of difference.

5 But what's really important here is part of  
6 your job is to provide spaces for people to live that  
7 have outdoor living areas and the outdoor living areas  
8 are usable. And I can tell you that if a sound is 62  
9 1/2 decibels right off State Street, people are not  
10 going to feel comfortable being out there in that  
11 noisy environment, and therefore they're not going to  
12 use their units.

13 So when you are approving condos you should  
14 stick with the General Plan guideline standards of a  
15 maximum of 60 -- that's a maximum, not even acceptable  
16 to me, but it's a maximum -- so 62.5 is significantly  
17 different. It would, you know, cause people hearing  
18 loss over long term. It's like a rock band playing  
19 and it's loud. And it's totally unacceptable to have  
20 residential condos that are brand new to have outdoor  
21 living space subjected to 62 1/2 decibels. It's just  
22 unacceptable.

23 And I see no reason why you'd want to do  
24 such a thing.

25 And regarding storage, the law says that

1 condos have to have storage, 300 cubic feet. That's a  
2 storage room 6 1/2 feet by 6 1/2 feet and eight feet  
3 tall. I visited the site. My opinion is there's not  
4 room on that site to build such storage rooms. The  
5 storage rooms have to be shown on the plans at the  
6 time of application so they're reviewed by staff, they  
7 go to ABR.

8           If a building has to be modified, well,  
9 let's go to ABR to get their approval. ABR needs to  
10 give you their advice on that modification, on the  
11 setback, on the appropriateness of the storage units.  
12 I mean this was not done. And it's improper. It  
13 needs to be sent back to ABR for and each have the  
14 storage units built in the plans. It either works or  
15 it doesn't. If it doesn't work, maybe that's another  
16 modification.

17           But it's just something that just cannot be  
18 approved -- in other words, you can't approve  
19 something and have them go back later and add that and  
20 hope it's going to work. I mean that makes no sense.

21           Now, on this toots -- the two-step  
22 process --

23           CHAIR JOSTES: Mr. Barry, you're -- you're a  
24 little bit over your three-minute mark.

25           MR. BARRY: Oh.

1 CHAIR JOSTES: So if you could wrap up, please.

2 MR. BARRY: Okay, thank you.

3 I just wanted to point out that the four  
4 apartments are less than 900 square feet, so they are  
5 affordable to the work force by design. People  
6 making, say, a hundred thousand a year, they could  
7 afford those 900 square-foot apartments. So it makes  
8 no sense to lose four affordable by design apartments  
9 for the work force to create condos.

10 And lastly, on the front setback  
11 modification the financial hardship should not be a  
12 finding. The only appropriate finding would be that  
13 there's something about the lot that would not allow  
14 that kind of a normal setback or something about the  
15 project couldn't be built. In this case it could have  
16 been built without having the modification; therefore  
17 I don't think you can make a finding that the  
18 modification would be allowed.

19 Thank you.

20 CHAIR JOSTES: Thank you.

21 Our last speaker is Mr. Landecker.

22 MR. LANDECKER: Thank you, Mr. Jostes, members of  
23 the Commission. I am David Landecker. I am the  
24 president of the Citizens Planning Association. I'm  
25 speaking in support of this appeal.

1           Of the things that Mr. Tabor said, speaking  
2 on behalf of the applicant, there are two things that  
3 I found very credible. The first of them is that the  
4 applicants always intended to build condos on this  
5 property, not apartments. The second one is that  
6 their failure to show up here today and instead to be  
7 at their mother's birthday party shows where you stand  
8 in their hierarchy. It's pretty clear that these  
9 applicants don't have a lot of respect for the City  
10 and its processes.

11           What was less credible that Mr. Tabor said  
12 was that the fault for all of this belongs on an  
13 insurance agent. The reason these people have the  
14 money with which to build this building and to make  
15 this improvement is they put themselves out to be real  
16 estate brokers who know a whole lot about how the City  
17 works and how you build here and how you get things  
18 done and how you find loopholes. And that's indeed  
19 what they found here.

20           The fact is this is a de novo hearing. That  
21 means you don't need to put any weight on staff's  
22 decision. It's your decision. And it's your decision  
23 based entirely on your discretion, the discretion  
24 you're given under the law. And that discretion, as  
25 we've seen, is based on what's in the best interests

1 of safety, health, and general welfare of this  
2 community. In other words, what's right, what makes  
3 sense, what's good for our community.

4 As Ms. Flacks and several others have said,  
5 this is a two-step flip situation. Not something that  
6 the City favors, something the City's trying to figure  
7 out how to get around. And you have an opportunity to  
8 say, is this good for us? Or is this bad for us? I  
9 submit it's not good for us.

10 As Ms. McKinney said, this really has shown  
11 a lot of disrespect for our community, for our  
12 process. It's not what we want to favor. It's your  
13 discretion whether you think this is something that  
14 ought to be favored or not. It's your discretion to  
15 say is avoiding environmental review and noise studies  
16 and all of that stuff by going through the process for  
17 apartment units rather than condo units, is that a  
18 good thing for our city? I submit it's not.

19 Is avoiding the parking requirements or  
20 changing parking requirements on State Street a good  
21 thing? Especially when they come in here today and  
22 go, "Oh, gosh. I guess we calculated this all wrong.  
23 You got to make more modifications than even we asked  
24 for before." Is it a good thing?

25 I -- I -- is it something we even understand

1 that the records of the ABR action disappeared during  
2 a records request that was pending? That just seems  
3 very odd to me. And I don't know what else to say  
4 about it. But it's pretty odd.

5           These miscalculations are pretty odd. They  
6 don't normally happen. And I wonder what in the world  
7 is going on. I usually have a -- a lot -- good reason  
8 to have a lot of faith in City staff. And they have  
9 good reason to be embarrassed in what's taken place  
10 here.

11           You are the representatives of our  
12 community. And it's your choice. It is your  
13 discretion.

14           I want to thank Mr. Kahan for his hard work  
15 and for bringing this matter there --

16           CHAIR JOSTES: You're about three minutes.

17           MR. LANDECKER: -- matter before you. I ask you  
18 to exercise your discretion and say no. Please uphold  
19 the appeal.

20           Thank you.

21           CHAIR JOSTES: Thank you, Mr. Landecker. Is  
22 there anybody else in the audience who would like to  
23 address the Commission on this matter?

24           Okay, seeing none, I'm going to close the  
25 public portion.

1           And, Mr. Kahan, you -- we don't typically  
2 allow for a debate --

3           MR. KAHAN:   (Inaudible)

4           CHAIR JOSTES:  -- of the public comment.

5           MR. KAHAN:  No, I -- what I did is I reserved  
6 some of my time to respond.  And I thought that was  
7 acceptable.  I can be very brief.

8           CHAIR JOSTES:  You have -- you have three minutes  
9 left, Mr. Kahan.

10          MR. KAHAN:  Thank you.  Thank you.  I appreciate  
11 it.

12                       One of the things I overlooked, it just  
13 occurred to me, for tentative subdivision maps I  
14 haven't seen one in the file here anywhere.  And I've  
15 looked at it quite a few times.  But as I recall from  
16 the code, in order to approve a tentative subdivision  
17 map it has to comply with the zoning.  And I think  
18 there has to be a notation on this tentative  
19 subdivision map.

20                       Does that say "Tentative Subdivision Map,"  
21 whatever it is?  I didn't see it in the packet.  It  
22 has to say it does not comply with the zoning.  It  
23 does not comply with the zoning right here.

24                       I think what you can also say here, the  
25 environmental process has been circumvented in this.

1 Those records, as I noted, had disappeared also. I'm  
2 a frustrated architect, as a bunch of you know, and it  
3 would have been very easy, if this had gotten a full  
4 review, to site this on the property in the -- a  
5 location that would have worked better, that would  
6 have addressed the sound issues.

7 About the storage to put it in, I don't  
8 think the open space is there. It's calculated. If  
9 you're going to put the storage in, you're going to  
10 chew up whatever space could be used for open space.  
11 And there are such a multitude of problems here that I  
12 just say something just doesn't pass the test.

13 And I would hope that a clear message would  
14 be given to developers, most architects in this town  
15 play by the rules. They do it right. And we rely on  
16 that. And I think here to give a message to this kind  
17 of thing that happened, to me, that this is acceptable  
18 would be extremely disappointing.

19 Thank you for your time and consideration.

20 CHAIR JOSTES: Thank you.

21 Okay, at this point I'll close the public  
22 portion and bring it back to the Commission. Are  
23 there any further questions of staff? I know the  
24 issue of the square footage and the 50 percent rule  
25 has been raised. I have a couple of more questions as



1 well. One -- one specifically relating to whether  
2 storage to comply with the condominium conversion  
3 counts as square footage.

4 MS. HUBBELL: Chair Jostes, if it goes to the  
5 ground, it does count. And this does go to the  
6 ground.

7 CHAIR JOSTES: Okay.

8 MS. HUBBELL: So it would count in favor of the  
9 square footage for the residential. However, Mr.  
10 Barry is also correct that because the purpose of that  
11 elevator in the staircase is for the residential units  
12 on the second floor, they count against. And I don't  
13 know whether they were include -- which they were  
14 included. So we would need to check that.

15 CHAIR JOSTES: Okay.

16 Mr. White.

17 COMMISSIONER WHITE: Thank you, Mr. Chair.

18 I've raised this question another time and  
19 -- if not for this -- I expect that we won't have the  
20 answer today. But I ask that it be available for  
21 future deliberations on condominiums.

22 Do we know what percentage of condominiums  
23 are acting as rentals in this fair city at this point?  
24 And as I say, that's practically rhetorical. I don't  
25 think we have that.

1 MS. HUBBELL: Yeah, Chair Jostes and Commissioner  
2 White, I don't think we do. I know that we know --

3 COMMISSIONER WHITE: Right.

4 MS. HUBBELL: -- that the number of condominium  
5 units and the number of single-family units is  
6 substantial, and a substantial portion of those are  
7 occupied by renters because --

8 COMMISSIONER WHITE: Right.

9 MS. HUBBELL: -- even though the shift has been  
10 toward more condo units, the percentage of renters has  
11 remained stable.

12 COMMISSIONER WHITE: Right.

13 MS. HUBBELL: So in that respect --

14 COMMISSIONER WHITE: Well, I would -- I would  
15 appreciate that information to be available for the  
16 Commission and for future decision-makers when -- when  
17 -- when condominiums are being considered.

18 Thank you.

19 CHAIR JOSTES: Mr. Mahan.

20 COMMISSIONER MAHAN: Thank you, Mr. Chair. I  
21 have a question. It may be a question for Mr.  
22 Vincent.

23 But in the -- if this had come before the  
24 Planning Commission as a -- of -- and before staff as  
25 a -- as a condominium right from the get-go and in the

1 SD-2 zone -- can we put the other map up, the bigger  
2 map, the bigger site plan?

3           Yeah, I guess that's the one. I don't know  
4 if I can get my little light to -- give -- may I  
5 borrow --

6           Thank you.

7           The -- there it is. There -- there right  
8 that line right there is the 20-foot -- that's the 20-  
9 foot setback line. And I calculated that the area  
10 outside of that 20-foot setback line is about 480  
11 square feet.

12           Now, the question is, in -- in the  
13 discretionary process that -- that staff would be  
14 doing, reorganizing that this is going to eventually  
15 come to the Planning Commission and we're -- and we're  
16 in a mood to protect the SD-2 setbacks, would -- would  
17 we have the authority to ask the developer to remove  
18 that part of the existing building, assuming that of  
19 course that some condominium project was approved? Is  
20 that a -- is that --

21           You understand, Mr. Vincent, what I'm  
22 saying? Is -- is 480 square feet, removing a 480-  
23 square-foot existing building as a part of a bigger  
24 project, is that a reasonable thing for the -- for the  
25 Commission to ask?

1 MR. VINCENT: So you're talking about the 480  
2 square feet of existing nonconforming construction?

3 COMMISSIONER MAHAN: Right. In -- in the SD --

4 MR. VINCENT: The City's --

5 COMMISSIONER MAHAN: -- 2 set- -- 20-foot  
6 setback.

7 MR. VINCENT: Right. The City has a  
8 nonconforming ordinance that would allow that to stay  
9 as long as the new construction is not exacerbating  
10 the nonconformancy.

11 So I think that the City has already  
12 addressed that particular situation in its  
13 nonconforming -- its nonconformancy ordinance saying  
14 we're not going to penalize property owners for the  
15 legal nonconforming, the -- I think where the  
16 difference in this particular project today is that  
17 some new construction went on top of that.

18 COMMISSIONER MAHAN: Yeah.

19 MR. VINCENT: Some new construction went into the  
20 SD-2 setback. And that's why -- and by error. And I  
21 -- you know, that -- that is an error. I want to make  
22 clear a statement that Mr. Kahan made a little bit  
23 earlier about the City's stance on the enforcement of  
24 that.

25 The -- the -- the construction or the --

1 this construction occurred according to a building  
2 permit issued by the City. It was -- it was an error  
3 to issue a building permit to allow construction, new  
4 construction, to occur in the SD-2 setback.

5           However, the applicant proceeded in  
6 conformance with that building permit and built their  
7 building to it. The City is at this point estopped.  
8 It's legally prevented from enforcing that setback  
9 because the applicant relied on a permit issued by the  
10 City, even though in error.

11           So I -- that is one situation regarding this  
12 particular property. Mr. Kahan has made several other  
13 allegations of other inconsistencies. Those are  
14 rightly handled through a code enforcement issue if  
15 they exist. So I don't want to -- he made a blanket  
16 statement that -- that our office has -- has  
17 recommended to staff that we don't have the ability to  
18 deal with other issues. That has not been the  
19 statement from our office. For the particular issue  
20 of the setback we have found that -- that the  
21 applicants proceeded in accordance with a building  
22 permit, so -- and again, here's another one of those  
23 answers that it's a long-winded answer for maybe a yes  
24 or no question, maybe not.

25           I would say no to the -- to the particular

1 question regarding the 480 square feet because of the  
2 existence of the nonconforming ordinance. But I did  
3 want to clarify that other issue regarding the other  
4 -- the new construction.

5 COMMISSIONER MAHAN: Thank you.

6 MS. WEISS: Chair Jostes, I might -- from a staff  
7 standpoint the City Attorney's Office advises, you  
8 know, of property rights and what the code allows the  
9 property owner to have. And we also go through a  
10 process of conditioning approvals and making findings  
11 about size, bulk, and scale, and so forth.

12 I think it is possible -- and I have seen  
13 the Planning Commission and the design review process  
14 result, and alterations of existing structures. And I  
15 think that's what Commissioner Mahan is getting at, is  
16 if the massing of the second story didn't fit well  
17 over the first story or you wanted to see the entry  
18 relocated to another site or -- and we could  
19 articulate a reason for modifying or change -- I don't  
20 want to use that word, but, you know, altering the  
21 existing building -- and I think if it was well  
22 explained, then perhaps, Mr. Vincent, if you would  
23 concur, that that does happen in the -- in the review  
24 process.

25 The applicant has a certain expectation that

1 their existing building, you know, is there, and they  
2 don't want to tear it down. But I think about like  
3 St. Vincent's, I mean we went through this big thing  
4 in the St. Vincent housing project where all these  
5 existing buildings they wanted to keep and wrap the  
6 new senior project. And I remember Commissioner Mahan  
7 really urged them to, you know, modify that existing  
8 building.

9           So I've seen it happen in the planning  
10 process. And again, I think some of that happened at  
11 the ABR in looking at the design review. But rather  
12 than removing the structure, they enhanced it further  
13 into the setback. So that's what happened in this  
14 case.

15           CHAIR JOSTES: Okay.

16           Mr. White.

17           COMMISSIONER WHITE: No.

18           CHAIR JOSTES: No? You're done? Okay.

19           I -- I've got a question. And this relates  
20 to the -- to the CEQA determination on this project.  
21 And I -- I know we'll get good advice from Ms. Hubbell  
22 because she's probably more experienced than most in  
23 the -- in the City on this one.

24           When the City uses a 60-decibel threshold  
25 for exterior noise in determining whether there's the

1 potential for significant effect, and I'm -- and at  
2 the same time we've got a categor- -- a set of  
3 categorical exemptions that rule out classes of  
4 projects by -- by classification that don't have  
5 significant effects, when you have a -- a -- an MEA --  
6 established MEA threshold exceeded, does that  
7 exceedence trump the -- the categorical exemption?  
8 And -- and there's some -- there's always a little bit  
9 of gray area in here. How does -- how does the City  
10 deal with that?

11 MS. HUBBELL: You know, Chair Jostes and  
12 Commissioners, this is -- you know, some exemptions do  
13 get trumped because of location. And location might  
14 reference to the noise issue. And in fact when this  
15 was originally under consideration, they did call for  
16 the noise -- they did call for a noise study. It  
17 moved back and forth between different staff members.  
18 And it got lost. The project was constructed.

19 Now, for an existing structure to convert  
20 from rental to ownership, then I think that's the case  
21 where the situation exists, is in place, and we can't  
22 -- do we go back then and do an environmental  
23 determination at that point? We believe not.

24 However, I also want to -- this is going to  
25 come up also on the next project, the -- the whole



1 noise discussion. And we have been grappling with the  
2 issue of Noise Element consistency, CEQA  
3 determinations, and how we get there from here. And  
4 when we go back and we actually look at the master  
5 environmental assessment, we do have a threshold of 60  
6 decibels --

7 CHAIR JOSTES: Yes.

8 MS. HUBBELL: -- but it also says we don't  
9 actually do a study until we exceed 70.

10 So in this case it didn't exceed 70. We --  
11 if -- if we were following the rules, we wouldn't  
12 necessarily require the study to be prepared, but we  
13 might ask that they work to reduce it. How -- and  
14 what we've -- what we've tried to craft is a way  
15 through the lack of clarity between the Noise Element,  
16 the Master Environmental Assessment, and the threshold  
17 and come up with a way to handle noise issues.

18 And what we've -- what we've come up with is  
19 for required outdoor living areas, you meet the  
20 threshold, which is 60 decibels.

21 Those areas beyond the required outdoor  
22 areas, we look back to the Noise Element. And the  
23 Noise Element, while it sets a base standard of 60,  
24 also recognizes, when you look at the charts, that  
25 noise may be acceptable in these other areas up to 75

1 decibels for multiple -- for single-family/multiple --  
2 multiple-family projects. And then we look at it case  
3 by case to see whether it's a substantial amount over  
4 the -- the location of the -- of the -- of the usable  
5 area, what it -- you know, what it's used for, what's  
6 outside of it, what's creating the noise, and how much  
7 above the 60-decibel area it is.

8           So if we -- if the required area is back out  
9 of the -- is all within the 60-decibel or less and the  
10 area outside of it is in the range of around 62, which  
11 is most -- most experts agree is not audible to the  
12 average person, then we conclude that probably we can  
13 make the General Plan consistency findings for this  
14 and the required area is under 60 decibels. Therefore  
15 we don't have an environmental issue.

16           It's complicated.

17           CHAIR JOSTES: Well, let -- let -- I -- I know it  
18 is. It -- but the reason I'm pushing on this is  
19 because it -- it came up in the Berkus project, it's  
20 coming up on this project --

21           MS. HUBBELL: Right.

22           CHAIR JOSTES: -- it's both a technical issue and  
23 it's a policy issue --

24           MS. HUBBELL: That's correct.

25           CHAIR JOSTES: -- that im- -- that educates us

1 and informs us in the process of making a finding of  
2 consistency with the Noise Element of the General  
3 Plan, which in this case is a requirement of the  
4 condominium conversion because it invokes a tentative  
5 map.

6 MS. HUBBELL: Right.

7 CHAIR JOSTES: And that -- and that -- and that's  
8 a very -- that's a -- the most critical piece on this  
9 from my standpoint, having evolved through the City  
10 with the MEA from its inception, with the Noise  
11 Element from its inception. And -- and my -- what I'm  
12 trying to get my hands around is -- is the issue of so  
13 we now have a moving target of the required outdoor  
14 living space, which is X square feet. And we have a  
15 -- a porch, if you will, that is larger than X square  
16 feet. And so we can place that exterior living area  
17 where we can put it with the least amount of noise  
18 exposure, knowing that noise exposure goes from the  
19 worst closer to the street to the least right at the  
20 edge.

21 So I -- I'm going to need to see more -- a  
22 little bit more certainty in any mitigating effect if  
23 I'm going to be able to make a -- a finding of  
24 consistency with the exterior noise policies that the  
25 City has for the Noise Element.

1           I don't know whether that -- that's asking  
2 for more feedback or just forming a statement in the  
3 form of a question.

4           MS. HUBBELL: Well, and I -- yeah, and I think  
5 what -- I think what it will depend on is the action  
6 you take today on the appeal. If it looks like you're  
7 going to deny the appeal and uphold the approval by  
8 the staff hearing officer, then I think that you're  
9 probably really looking at a continuance for us to go  
10 back and look further at some of these issues.

11           If you are looking to uphold the appeal and  
12 thus deny the staff hearing officer's decision for the  
13 condo conversion, then it's moot.

14           CHAIR JOSTES: That's -- oh, okay.

15           Okay, so the matter is back to the  
16 Commission. Any lights on for -- for -- yes, Ms.  
17 Jacobs, you were first to the light.

18           MS. JACOBS: Thank you, Chair Jostes.

19           As many of you know, the upstate upper State  
20 Street Uptown area is of great interest to me. This  
21 is an area of the city that has a superb potential for  
22 the next generation of planning for Santa Barbara.

23           I think that upholding the approval of the  
24 project, which is to say bypassing this appeal, would  
25 be wrong. I think it would be wrong for upper State

1 Street, and I think it would be wrong in terms of  
2 procedural precedent.

3 Today we have a valid appeal. And we have  
4 some admission of errors on the part of the City. And  
5 thirdly, we have a building that's already built. And  
6 this is an uncomfortable place to be.

7 And so in reading the appeal and the  
8 application, I think -- I see three options of ways  
9 that we could go. One would be to uphold the appeal,  
10 deny the condo conversion, but leave the door open for  
11 the applicant to -- to leave it for rentals for the  
12 time being and to come back with a different project  
13 that somehow has no modifications required or  
14 otherwise is a better fit.

15 A second option is to deny the appeal and  
16 waive the magic wand of modifications to erase the  
17 City's errors and reward the developers with a nice  
18 condominium conversion project.

19 And the third option is to tinker with it.  
20 And I think that the -- we certainly have had some  
21 very good success with that strategy in the past. If  
22 we do decide to tinker with it and possibly look at a  
23 continuance, some of the items I would put on that  
24 list would be to find out where the storage is going,  
25 redesign the portico share to be less brutal and more

1 appealing. One observation of the design is to call  
2 it a hovercraft or to see this large bulky building  
3 sitting almost like a teeter totter on top of a small  
4 building.

5 And it's a harsh space to walk for a  
6 pedestrian. And I think if we had seen it in the  
7 beginning as a mixed use building with condos, we  
8 might have made some recommendations on that  
9 pedestrian frontage of the building.

10 Is there a chance to have one curb cut  
11 instead of two? Probably not at this late date. Mr.  
12 Mahan suggested taking the building back to the 20-  
13 foot setback. Even ten feet going back to the one-  
14 story setback would be an improvement.

15 And then, lastly, in walking around the  
16 area, the pedestrian connection between the upstairs  
17 living units and the street itself is -- is very poor.  
18 There's a -- a little staircase that people walk down,  
19 and then they mingle a bit with the cars and find  
20 their way out to the sidewalk. And that's generally  
21 not the way that -- that we have done things like this  
22 if we've had a chance to look at them from the start.  
23 So the pedestrian connection to the street, especially  
24 in this area where we would hope that people would be  
25 walking, needs to be improved.

1           And the -- the plate height of the first  
2 floor is very high. And the way that the podium is  
3 set up that the second story sits up high on these  
4 columns and kind of looms over the landscape, I think  
5 there might be an architectural solution to that,  
6 partially enclosing the parking or in some way making  
7 it more a part of the building and less a set of  
8 columns that this second story floats on.

9           So again, I said it's a uncomfortable place  
10 to be in, and I look forward to hearing from my fellow  
11 Commissioners.

12           CHAIR JOSTES: Thank you. Ms. Larson.

13           MR. VINCENT: Mr. Chair?

14           CHAIR JOSTES: Yes, Mr. Vincent.

15           MR. VINCENT: Before we go further, I'm hearing  
16 from staff that we have a -- a fundamental factual  
17 problem regarding the parking. One of the things that  
18 we -- and we've been discussing here is the -- the  
19 conversion within five years of building permit. In  
20 order to qualify for conversion within five years of  
21 the issuance of a building permit, the project must  
22 meet the development standards for new condominium  
23 construction, even if it's mixed use.

24           And what I'm hearing is that -- that the  
25 application does not satisfy the qualifying 50 percent

1 rule for the mixed use parking reduction. Absent that  
2 parking reduction, the project does not meet the  
3 parking requirements for new condominium construction.

4           So I -- I need to -- with those facts in  
5 place, I don't think it's -- the Commission can act on  
6 this application at this time. The applicant could  
7 come back with a design that shows sufficient parking  
8 or come back with a design that has the proper  
9 relationship ratio of -- of nonresidential and  
10 residential construction and then reapply for the  
11 conversion of that design.

12           But unless -- you know, I mean in the --  
13 again, this is a factual question, but with the facts  
14 that I've heard so far today this application for a  
15 condo conversion at this time is not right. And so  
16 you could make a continuance potentially, could -- you  
17 know, a continuance at this time could potentially  
18 give the applicant an opportunity to -- if it's just  
19 simply a matter of restriping a parking lot or doing  
20 something like that -- I doubt that, but if it's -- if  
21 that is the case, that would be one solution.

22           So I -- unless staff has anything else at  
23 this point I would be recommending a continuance for  
24 -- for the applicant to consider such options or  
25 something else.



1 MS. HUBBELL: I would -- yeah, I think it would  
2 be either a continuance or up -- you know, uphold the  
3 appeal and deny the project in its entirety.

4 MR. VINCENT: That -- that would be another  
5 option, would be the upholding the appeal.

6 CHAIR JOSTES: I think -- I think, given those  
7 two options, I think we need to hear from all of the  
8 Commissioners to be able to make an informed judgment  
9 of which way we want to go. But we appreciate your  
10 getting us clarity on that information piece.

11 Ms. Larson.

12 COMMISSIONER LARSON: Thank you, Mr. Chair.

13 I was on ABR when part of this came -- for  
14 part of the time that this came through, and it was  
15 presented as being apartments. We were all secretly  
16 very excited that it was going to be apartments. And  
17 we thought that was terrific.

18 I can't find -- make the findings that this  
19 project is consistent with the zoning for SD-2. And I  
20 -- I am going to uphold the appeal.

21 Thank you.

22 CHAIR JOSTES: Mr. Thompson.

23 COMMISSIONER THOMPSON: Thank you, Mr. Chairman.

24 Well, we've all talked about it already, you  
25 know, the condo conversion application three weeks

1 after building permit and it was processed through a  
2 lesser review to get it in through there -- that  
3 process a little more easily.

4 And there are many questions that in my mind  
5 need to be resolved. The parking was high on the  
6 list. We just discussed was -- what I was going to  
7 say.

8 The noise for me has to be addressed,  
9 whether it's condominiums or apartment. The issue of  
10 noise has been raised, and it's not a matter of  
11 whether it's a condominium noise or not. It's a  
12 health issue. And I think we need to make sure that,  
13 whether it's apartments or ownership units, that it  
14 meets the City's standards for a residency.

15 The storage for condos has to be addressed.  
16 And there are several discrepancies between the  
17 approved building plans that I've seen and what exists  
18 over there that have to be corrected. So overall,  
19 although I don't agree with much of what the appellant  
20 listed -- it seemed like he was almost asking for the  
21 building to be taken down and start over again -- I  
22 don't agree with all of the things, but I do support  
23 the appeal. And that's how I would vote, would --  
24 would be to uphold the appeal.

25 CHAIR JOSTES: Thank you, Mr. Thompson.

1                   Mr. White.

2                   COMMISSIONER WHITE: Thank you, Mr. Chair.

3                   I will support the appeal, but I want to  
4 also -- and I -- I want to pause for a moment on the  
5 two-step flip process, which I have defended in the  
6 last few years. But I think it should be looked at as  
7 a transparent open process.

8                   And I believe that the owners -- I having  
9 experienced this process in the last five years,  
10 discovered the requirement of an insurance policy for  
11 a minicondo project that was in the quarter to a half  
12 million-dollar range. And it was that insurance  
13 policy which was pushing the project to go forward as  
14 a rental project and then get converted to  
15 condominiums afterwards, because the construction  
16 could go through as rental and then get converted.

17                   I say that because I think that it's valid  
18 to sidestep that insurance policy, but I think it's  
19 also necessary that the developer make the pact with  
20 the community and with the City that this is the  
21 intent, we are going to make these into condominiums.  
22 And we're going forward, and do your best to show us  
23 where -- what -- to guide us on what the requirements  
24 will be.

25                   So that's -- I want -- I hope that as this

1 conversation goes -- and I understand that -- that the  
2 insurance is -- obviously it's in real turmoil now.  
3 First of all, prices are coming down and also  
4 requirements are tightening up so that people can't  
5 sidestep it as well, and the cost is coming down. So  
6 there are -- the -- the -- this ever changing process,  
7 I hope that when this discussion does go to the City,  
8 to Council, that we do have a good, one of the top,  
9 insurance folks there to share what is the situation  
10 today. Because it is -- that's a big number in -- in  
11 this -- in the construction game. And it may  
12 influence whether projects get built or not.

13           Certainly -- but as I say, the transparency  
14 needs to be there. And in -- I'm -- actually one of  
15 the informative ingredients that I'm hearing today is  
16 that this project came to ABR as a rental project.  
17 That's -- that's -- doesn't satisfy my standard of  
18 what I was talking about was okay, we do intend to  
19 make these into condos, folks, and let's keep flags up  
20 so that we're getting those standards met.

21           Another defense of that -- of the condos, as  
22 I mentioned, is do they get built and do they get --  
23 end up -- how many of them end up getting rented out?  
24 Is it a third of them? Is it half of them?

25           There's another defense of the condos is

1 they pay good taxes. And they -- they have value.  
2 And these -- these units would be there in the 900 to  
3 a thousand square-foot range. That is microscopic  
4 compared to what we've been seeing in the way of  
5 condos.

6 So -- and they would therefore be presumably  
7 of lower cost.

8 So the -- I -- I hear the tinkering options  
9 out there. It -- this project is -- it's -- it's with  
10 heavy heart that I can't support this project because  
11 I think that it would have ended up having the  
12 potential. Had it been more transparent in how it had  
13 come through it might have been able to offer -- and  
14 then all the standards would have been met. I think  
15 it had the option of providing some of the 900-square-  
16 foot unit condos. I think that those are definitely a  
17 niche that is un -- very, very much unmet in this  
18 community.

19 And I -- I expect that the developer, if  
20 knowing -- if he knew that these were not going to be  
21 condominiums, that they might not have been built.  
22 And that is something that we need to be very careful  
23 about this process, what -- at \$300 a square foot, the  
24 construction costs, and now -- now four, does -- does  
25 building rental housing make any sense?

1           And so I -- I just -- I think that those are  
2 -- those are elements that it isn't just the -- the  
3 slick abuse of the -- of the process that we -- we  
4 have to deal with here. That's a critical element.  
5 But how does the market provide housing, both sale and  
6 rental, in this community? And it -- it does it by, I  
7 think, mixing ownership with rental.

8           Thank you.

9           CHAIR JOSTES: Thank you, Mr. White.

10          Mr. Mahan.

11          COMMISSIONER MAHAN: Thank you, Mr. Chair.

12               The -- just to take off on that last  
13 comment, the -- the way that you build rental housing  
14 is you get a bare site and you build a simple two-  
15 story or three-story building with spread footings,  
16 simple construction.

17               This is, as Commissioner Jacobs suggested,  
18 this is a new building that straddles across an  
19 existing building. Very, very expensive kind of  
20 construction. Very, very tough -- a very tough  
21 project. If -- if the applicant would have come to me  
22 as an architect, I would have said, "Oh, boy. This is  
23 a tough project. You've got an old chicken restaurant  
24 sitting in the middle of a site, legal, nonconforming  
25 -- I mean, into the -- legal nonconforming into the

1 SD-2 setback, and you're going to try to do something  
2 with this. Very, very tough."

3 And the -- what the SD-2 wants to have  
4 happen along State Street -- and I think we're all  
5 embracing that and -- and I think for some degree  
6 Uptown State Street, upper State Street, has been  
7 forgotten. And now we're all focusing on it, and  
8 we're saying what do we want to do? Well, one of the  
9 things we want to do is we want the SD-2 vision to be  
10 executed. And so I want to see 20-feet or at least 10  
11 feet of landscaping, of pedestrian amenities along  
12 here, a single driveway in.

13 I mean how do you accomplish that with this  
14 building sitting in the middle of this site? This is  
15 a very, very tough -- a tough situation. And -- and  
16 it -- it -- it needed -- it needed the review and all  
17 of the brains that -- that the Planning Commission  
18 and, you know, the ABR looking at it as a condominium  
19 could muster.

20 What we have is a -- is a project that  
21 really doesn't work as a condominium. It doesn't have  
22 the parking that it needs. Parking on -- on -- on  
23 upper State Street Uptown is critical, I think. It's  
24 critical. We -- we need to be able to get the cars  
25 off the street or they're going to be driving around

1 on the street looking for someplace else to go. This  
2 doesn't have enough parking as it's configured now.  
3 It needs 22 stalls. And it's got 18. And that's --  
4 that's a -- that's a shortfall. That's quite a  
5 shortfall.

6           It -- it doesn't -- it -- it -- this --  
7 this -- this storage, which is really important I  
8 think -- by the way the -- it does show three storage  
9 units right in here and one over there. They are  
10 about four feet wide, and they're -- they're eight  
11 feet long, and they have to be nine feet tall to --  
12 which would be about to that right there. I guess you  
13 could stand your surfboard up in there. But --

14           And the other problem that I see, while that  
15 -- while that makes a 300 cubic feet, it -- it means  
16 that to look in your storage or to get something in or  
17 out, you've got to stand in the driveway. And as a  
18 design I don't think that that's acceptable. That's  
19 not -- that's not an acceptable way to provide storage  
20 for people, that they would be standing in the  
21 driveway, cars backing -- backing out of here very --  
22 backing maneuver is a very dangerous maneuver. Those  
23 doors being open -- it just doesn't work.

24           So that we got the parking doesn't work and  
25 the storage doesn't work. The setback we've got this



1 illegal situation here. One of the reasons that the  
2 -- that -- and one of the levers that you have with  
3 nonconforming buildings is that usually they're funky,  
4 they're ugly. And so people don't -- don't want to  
5 have an ugly building out in front of a new  
6 condominium. So in the -- in the review process, you  
7 say, well, what are you going to do with that? We're  
8 not going to let you make that building nicer, because  
9 it -- because it's -- it -- it's legal but it's  
10 nonconforming. We're not going to let you do anything  
11 to it. But maybe if you get rid of it, you know, then  
12 you can provide it back someplace else.

13 And so there's a give-and-take there, and --  
14 and in that process something good happens. And this,  
15 all of this area here, becomes landscaping and -- and  
16 a pedestrian amenity.

17 We don't have that. So -- so the setback is  
18 a problem, the parking is a problem, the storage is a  
19 problem, the stairs and elevator haven't been counted  
20 in, so the -- the units are too big for the -- for the  
21 50 percent rule. And we don't have a project here --

22 UNIDENTIFIED MALE: (Inaudible)

23 COMMISSIONER MAHAN: Pardon me?

24 COMMISSIONER WHITE: Noise.

25 COMMISSIONER MAHAN: And the noise issue is a

1 problem. So -- so there's a whole bunch of problems.  
2 This is not a tinker. This is not a tinker issue.  
3 This is a very serious issue. I'm going to -- I don't  
4 think a continuance to tinker with it is where we need  
5 to go.

6 So I'm going to support the appeal, and I  
7 think that it -- it will exist as rental units until  
8 something drastic happens. Maybe if the applicant can  
9 come up with a miracle, architectural miracle. But  
10 it's not a tinker. I don't see it as a tinker thing.

11 So I -- I couldn't support a continuance,  
12 but I will support the appeal.

13 CHAIR JOSTES: Thank you, Mr. Mahan.

14 I wholeheartedly support your comments on --  
15 on this. I think you've really hit a number of good  
16 points. Like Ms. Larson, I can't make the findings  
17 either for General Plan consistency because I don't  
18 have enough information to with certainty say yes,  
19 we've got the noise levels down below where they are  
20 supposed to be.

21 And secondly, the -- the whole 50 percent  
22 issue.

23 So those things taken together I appreciate  
24 the comments that were made by the appellant as well  
25 as all of the members who spoke, including the

1 applicant's representative. And -- and looking at  
2 this -- this -- the way this project is currently set  
3 up on the street, as Mr. Mahan has said, it's -- I  
4 don't think it's the kind of direction we are  
5 envisioning going in the outer State Street area.

6           It -- it -- it is not friendly from the --  
7 from the street and -- and is a -- it totally maxes  
8 out the development of this site to the detriment, I  
9 think, of a pedestrian friendly feel.

10           That being said, I don't have anything else  
11 to add at this point. I would encourage a motion from  
12 one of my colleagues and Ms. -- Ms. Jacobs has her  
13 light on.

14           MS. JACOBS: I'm going to make a motion. I move  
15 that the Planning Commission upholds the appeal and is  
16 unable to make the findings of consistency with the  
17 General Plan.

18           COMMISSIONER THOMPSON: Second.

19           CHAIR JOSTES: Further discussion?

20           Mr. White.

21           COMMISSIONER WHITE: Mr. Chair, I just -- I think  
22 that the -- I really felt like Mr. Mahan summarized  
23 the points that were made by all of us. And I would  
24 hope that they be highlighted in -- I think that the  
25 -- maybe even the motion that that -- that they were -

1 - I just don't -- I think maybe -- or at least in the  
2 minutes. I guess that would -- is that all we need,  
3 Jan?

4 Okay, all right.

5 MS. JACOBS: What would be -- I would like to  
6 make sure the applicant has those in particular  
7 because we have an existing building. And if this  
8 should come back at a future date we would want the  
9 owner of the building to know what the -- what the  
10 City is hoping to see in a revised project.

11 MS. HUBBELL: This is, I think -- you know, I  
12 think we'll make sure that the minutes are very clear.  
13 And if -- that's probably the simplest way to do it.  
14 I -- you've already -- you've stated the reasons why,  
15 and -- and maybe as we develop the resolution for your  
16 consideration we can actually -- we can actually put  
17 some of that language into the resolution to support  
18 the finding.

19 COMMISSIONER WHITE: Mr. Chair, may I --

20 CHAIR JOSTES: Yes, Mr. White.

21 COMMISSIONER WHITE: (Inaudible) I feel strongly  
22 that often our minutes and our resos will have a sort  
23 of "Comments are made" to this effect or that effect.  
24 And this is not one of those. This is a very clear --

25 MS. HUBBELL: We'll put it -- we'll put it --

1 we'll put Mr. Mahan's comments --

2 COMMISSIONER WHITE: (Inaudible) thank you.

3 MS. HUBBELL: -- into the findings then.

4 COMMISSIONER WHITE: Thank you.

5 CHAIR JOSTES: Thank you. Okay. Ms. Jacobs, you  
6 had a question or a request?

7 MS. JACOBS: I heard Mr. Vincent's light go on.  
8 And just should this become the subject of a next  
9 level of appeal or some other future iteration, what  
10 would be recommended? Should we include these items  
11 in the motion? Should we make a second additional  
12 motion that would itemize those? What would you  
13 advise?

14 MR. VINCENT: I think, Mr. Chair and Members of  
15 the Commission, I think it would be helpful to make --  
16 you know, there was a laundry list that Mr. Mahan just  
17 made of -- of issues as to why the find -- the  
18 necessary findings can't be made to support the  
19 tentative map.

20 I also -- actually the reason why I  
21 specifically clicked on is I do want the -- the motion  
22 to reflect an action regarding the modification as  
23 well, since the modification itself is a separate  
24 action and it could exist on its own independent of  
25 the condo conversion or the tentative map. And so if

1 the Commission has a feeling one way or the other  
2 regarding the modification, then I would recommend you  
3 -- you take an action regarding that as well.

4           What I was here -- so that would be the  
5 separate findings regarding the modification by  
6 itself. And I think that it would be helpful though,  
7 if this -- this project were to go on to appeal, for  
8 the resolution and the motion to reflect the reasoning  
9 of the -- the party making the motion that as to why  
10 -- why they -- you could not make those findings for  
11 the tentative map.

12           So turn to the -- to the required findings  
13 for the condo conversion or the -- and as well as the  
14 -- the tentative map findings. If you look to those  
15 and if you could give some connection between those  
16 findings and the discussion we've had, that would be  
17 helpful.

18           MS. JACOBS: Okay. So I would like to mean the  
19 motion to -- to state that the Planning Commission  
20 upholds the appeal and denies the project. That the  
21 request for a modification is denied. That the  
22 Commission is unable to make the findings in support  
23 of the condominium conversion, as all provisions of  
24 the Condominium Conversion Ordinance are not met. And  
25 in addition to that to specify the list that Mr. Mahan

1 has provided for us. And perhaps you could read those  
2 back to us just so we could hear those items again and  
3 make sure we've got them all.

4 CHAIR JOSTES: Ms. Jacobs, I believe Mr. Mahan  
5 would like to request a -- a delineation of two  
6 motions as opposed to a single motion to facilitate  
7 his providing more clarity. Is that (inaudible)  
8 interpretation?

9 COMMISSIONER MAHAN: I think that if we have a  
10 motion first to deny the modification and the reasons  
11 for why we can't make that modification -- this is on  
12 the setback -- and the -- because of the -- because of  
13 the underlying language and direction given to us in  
14 the SD-2 overlay and the -- and the illegal  
15 construction that has gone on in that particular zone  
16 first and vote on that and get that out of the way and  
17 then come back and do the condominium conversion as a  
18 second motion, it might be clearer.

19 CHAIR JOSTES: All right. So I'm comfortable  
20 with that as a seconder.

21 COMMISSIONER WHITE: I am -- I would like to add  
22 and the -- that -- that the emerging vision of Uptown  
23 -- of Uptown development is not being --

24 COMMISSIONER MAHAN: Consistently addressed.

25 COMMISSIONER WHITE: -- honored by this project.

1 CHAIR JOSTES: And -- and Mr. White, that would  
2 -- that would relate to --

3 MS. HUBBELL: Excuse me, Mr. -- Commissioner  
4 Thompson was the seconder of the original motion.

5 COMMISSIONER WHITE: Oh, well, I was the thirder.

6 MS. JACOBS: (Inaudible) White.

7 COMMISSIONER WHITE: No, I don't mean that.

8 CHAIR JOSTES: Okay.

9 COMMISSIONER WHITE: This is a -- not -- this is  
10 not to be laughed at.

11 CHAIR JOSTES: Let's -- let's -- let's pull back  
12 into --

13 COMMISSIONER WHITE: It really is not  
14 (inaudible) --

15 CHAIR JOSTES: -- into Roberts Rules. And, Mr.  
16 Thompson, as a seconder of Ms. -- Ms. Jacobs' motion,  
17 is her revision acceptable to you as a seconder?

18 COMMISSIONER THOMPSON: It's accepted. It's  
19 acceptable.

20 CHAIR JOSTES: Okay.

21 Mr. White --

22 COMMISSIONER WHITE: Mr. Chair, I would ask that  
23 the comment to the effect of the -- of the work that's  
24 going on to -- to -- to rejuvenate Uptown be part of  
25 that as well. I thought that Mr. Mahan's comment was



1 really germane to going forward with providing  
2 pedestrian amenities and --

3 COMMISSIONER MAHAN: The SD-2 vision.

4 COMMISSIONER WHITE: Okay. -- and the SD-2  
5 vision will be fine.

6 CHAIR JOSTES: Okay.

7 COMMISSIONER LARSON: Mr. Chair?

8 CHAIR JOSTES: Yes Ms. -- Ms. Larson.

9 COMMISSIONER LARSON: Do we need to include --  
10 excuse me. Do we need to include any language about  
11 the enforcement issue of the lack of landscaping in  
12 the front where that car was parked in that one  
13 parking space in front of the trash (inaudible)?

14 CHAIR JOSTES: I might suggest that be a separate  
15 motion --

16 COMMISSIONER LARSON: Okay, thank you.

17 CHAIR JOSTES: -- so that we have clarity on each  
18 one of the issues --

19 COMMISSIONER LARSON: Okay.

20 CHAIR JOSTES: -- the findings for the  
21 modification, the findings for the -- for the  
22 tentative map, and any other things that -- that the  
23 Commissioners --

24 COMMISSIONER LARSON: Enforcement issues.

25 CHAIR JOSTES: -- feel is necessary to clean up

1 the issues that they were --

2 COMMISSIONER LARSON: Thank you.

3 CHAIR JOSTES: -- faced with when -- when they  
4 made the site visit.

5 COMMISSIONER LARSON: Okay.

6 MS. JACOBS: But in this first motion I would  
7 like to include Mr. White's suggestion in that we have  
8 the overview of the vision of Uptown and the -- the --

9 MS. HUBBELL: So I'm reading this as keeping this  
10 reasonably succinct for just the modification. I  
11 think the -- the condo conversion one may be a little  
12 more broad.

13 "Deny the modification as the findings  
14 cannot be made in relation to the vision of the SD-2  
15 zone." Is that sufficient, or do you want to add any  
16 more to that?

17 CHAIR JOSTES: I --

18 MS. JACOBS: The SD-2 zone and the broader vision  
19 for an Uptown design standard.

20 MS. HUBBELL: Okay. "And the broader vision for  
21 an updown -- Uptown design --"

22 CHAIR JOSTES: Ms. Hubbell, I would go directly  
23 to the language that we use in -- in making  
24 modifications as specifically indicated on page 4 of  
25 the staff report regarding our inability to find that

1 it is --

2 MS. HUBBELL: That it's not --

3 CHAIR JOSTES: -- necessary to secure an  
4 appropriate improvement on the lot, promote uniformity  
5 of improvement, which relates to our -- our outer  
6 State Street vision, and prevent unreasonable  
7 hardship.

8 MS. HUBBELL: Right.

9 MS. JACOBS: So there is the -- the motion  
10 regarding -- regarding the front yard setback  
11 modification denial.

12 CHAIR JOSTES: Okay. Mr. Thompson, are you still  
13 in agreement that that's an appropriate motion to  
14 second?

15 COMMISSIONER THOMPSON: That's fine.

16 CHAIR JOSTES: Thank you.

17 We have a motion and second. Further  
18 discussion from the Commission? At this -- is there a  
19 need to provide for the applicant to speak to the  
20 motion that's in front of us? I think out of courtesy  
21 I would do so.

22 Mr. Tabor?

23 MR. TABOR: Thank you, Mr. Chair, Members of the  
24 Planning Commission.

25 I just think a disservice is being done by

1 the ambush part of the process that has allowed a lot  
2 of additional information to come in at the last  
3 minute and be presented here as if it was factual  
4 information without allowing a chance at all to  
5 respond to any of that.

6 Thank you.

7 CHAIR JOSTES: Thank you. Okay.

8 On the motion all in favor?

9 (All say "aye.")

10 CHAIR JOSTES: Opposed?

11 Abstain?

12 Motion carries unanimously and is appealable  
13 to the City council within ten days.

14 COMMISSIONER MAHAN: Working days.

15 CHAIR JOSTES: Are we -- are we -- no, it's -- we  
16 haven't made a change in that procedure. It's --

17 COMMISSIONER MAHAN: Okay.

18 CHAIR JOSTES: It's ten days.

19 Okay, there was discussion of a subsequent  
20 motion. Ms. Jacobs, did you want to follow up with  
21 that?

22 MS. JACOBS: I'll continue then with a motion  
23 again to uphold the appeal regarding the tentative map  
24 subdivision and the condominium conversion. The  
25 Commission is unable to make the findings that all

1 provisions of the Condominium Conversion Ordinance are  
2 met as per SBMC 28.88.120 and -- let's see. I think  
3 that's --

4 COMMISSIONER MAHAN: Can I second that?

5 MS. JACOBS: Do we need more?

6 MS. HUBBELL: Ms. -- I think this is where  
7 Bill's stuff comes in.

8 COMMISSIONER MAHAN: In essence.

9 MS. JACOBS: And this -- and this is where we  
10 would put in an addition specifying --

11 MS. HUBBELL: Store it -- the location of the  
12 storage --

13 MS. JACOBS: Right. And I would like to have Mr.  
14 Mahan help us with that.

15 COMMISSIONER MAHAN: I'll second the motion. The  
16 -- the -- the items were of course the setback, which  
17 we've already dealt with, the inadequate location of  
18 the storage and safety of the storage, the inadequate  
19 parking, and the fact that the 50 percent mixed use  
20 rule isn't met by this project, that the stairs and  
21 elevator areas have not been included --

22 MS. JACOBS: The noise.

23 COMMISSIONER MAHAN: -- and that the -- that the  
24 noise issues on the balconies -- on the State Street  
25 balconies are of concern.

1 CHAIR JOSTES: Okay, we have a motion and second.  
2 Further discussion?

3 COMMISSIONER WHITE: Well, Mr. Chair, was Ms.  
4 Larson -- I mean I don't know whether we can harken  
5 back to that ABR meeting about that this project was  
6 proposed as rental housing. Was that -- is your  
7 memory strong enough on that to confirm?

8 COMMISSIONER LARSON: Well, I really -- I -- I  
9 really do recall that it was -- because the reason I  
10 remember it is because those of us on the board who  
11 are more cynical said, "Yeah, right, that will be a --  
12 we'll see if that really happens." So I do recall  
13 that it was -- it came before us as rental.

14 And -- and I don't want to be stronger than  
15 that, but I do remember that it did. I can't quote  
16 it.

17 COMMISSIONER WHITE: Okay. I'll -- I'll let it  
18 -- we'll let it be. Yeah.

19 CHAIR JOSTES: Ms. Jacobs, as the motion maker,  
20 I'd like to request that rather than just speaking to  
21 noise issues we talk about an inability to find  
22 consistency with the Noise Element of the General  
23 Plan.

24 MS. JACOBS: I would add that. The Commission is  
25 not able to find consistency with the Noise Element of

1 the City's General Plan.

2 CHAIR JOSTES: Okay, do we need Ms. Hubbell to  
3 read that back to us? Or is we -- are we pretty much  
4 on the same page here?

5 MS. HUBBELL: I think we've got it.

6 CHAIR JOSTES: Okay.

7 MS. HUBBELL: I think this one's really clear  
8 now.

9 CHAIR JOSTES: Okay.

10 MS. HUBBELL: Thank you.

11 CHAIR JOSTES: Further discussion?

12 Call the question. All in favor?

13 (All say "aye.")

14 CHAIR JOSTES: Opposed?

15 Abstain?

16 Motion carries unanimously. This motion is  
17 also appealable to the City Council within ten days.

18 Ms. Larson, you had a question about the --  
19 the paving on the front portion --

20 COMMISSIONER LARSON: On -- on the site visit --

21 CHAIR JOSTES: -- of the setback.

22 COMMISSIONER LARSON: On the site visit the front  
23 portion of the setback near the trash there was an  
24 extra -- there was a parking space tucked in there  
25 that needed to be given to landscape per plan. And I

1 was just wondering if we needed to put that in a  
2 motion for enforcement of that and any other  
3 irregularities on the site. I can't remember them  
4 all, but that just struck me when I saw the car parked  
5 right on the sidewalk practically there. And I -- it  
6 just -- I don't know if we need to -- to help with  
7 that, help staff.

8 CHAIR JOSTES: Staff -- I believe staff indicated  
9 on their site visit that it was their intent to pursue  
10 making sure that the plans as built were consistent  
11 with the plans --

12 COMMISSIONER LARSON: Okay. That's fine.

13 CHAIR JOSTES: -- as -- as approved.

14 COMMISSIONER LARSON: Then we don't need to do a  
15 motion. Thanks.

16 CHAIR JOSTES: Okay. With no -- no further  
17 motions coming, this concludes our discussion of this  
18 matter.

19 Commission will take a 15-minute break and  
20 return at 25 after.

21 \* \* \*

22 (Item V. Excerpt from Administrative Agenda  
23 regarding destruction of records.)

24 CHAIR JOSTES: Okay. Let's move to the -- any  
25 review of the decisions of the staff hearing officer?



1           Okay, that concludes our agenda. And --

2           COMMISSIONER THOMPSON: One question for staff.  
3 It -- it was raised during the discussion of the State  
4 Street project about the destruction of records. Does  
5 the City not have a set period of time for records  
6 retention? Most businesses keep records for decades  
7 in storage centers just in case something like that  
8 comes up. But I thought the government had a  
9 requirement, at least at the federal level, I know  
10 they do. Does the City not have a requirement to  
11 store records?

12          MS. HUBBELL: We do have a requirement for  
13 records storage. And one of the things with the --  
14 with the Architectural Board of Review or the --  
15 basically the design review records is that once the  
16 building is constructed, those -- those records are  
17 usually destroyed.

18                 And the construction was complete. It was  
19 on the schedule for destruction. And I guess it --  
20 I'm not sure what happened, but apparently it was  
21 missed in relation to the public records request.

22          COMMISSIONER THOMPSON: So the trigger point is  
23 just the building construction, not any period of time  
24 after that to allow for issues as came up here for  
25 reference and so forth?

1 MS. HUBBELL: Yeah, for things that only go  
2 through design review, that's correct. And of course  
3 at the time it was approved it was only going through  
4 design review.

5 MS. JACOBS: So the street file would not exist?

6 MS. HUBBELL: Well, the street file for the  
7 building permit itself exists, but for instance, all  
8 of the -- the plan -- all of the plans for the  
9 Architectural Board of Review approval are gone. The  
10 MEA is gone. The sort of action record other than the  
11 minutes of course is gone. And so that's -- that's  
12 what happened there.

13 CHAIR JOSTES: Okay. Any further discussion?  
14 Having completed our business, motion for adjourn?

15 (End of requested portions.)  
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C E R T I F I C A T E

STATE OF CALIFORNIA            )  
COUNTY OF SANTA BARBARA    )   ss.  
\_\_\_\_\_)

I, MARLENE STRUSS, do hereby certify that I am a Professional Transcriptionist and that I recorded, from DVD to audiotape and in stenotype, the proceedings fully and accurately to the best of my skill and ability; that I have caused my stenotype notes to be translated into typewriting, and that the foregoing pages numbered 5 through 125 herein constitute a complete and accurate transcript of said stenotype notes.

IN WITNESS WHEREOF, I have subscribed this certificate at Santa Barbara, California, on this 20th day of November, 2006.

\_\_\_\_\_  
MARLENE STRUSS

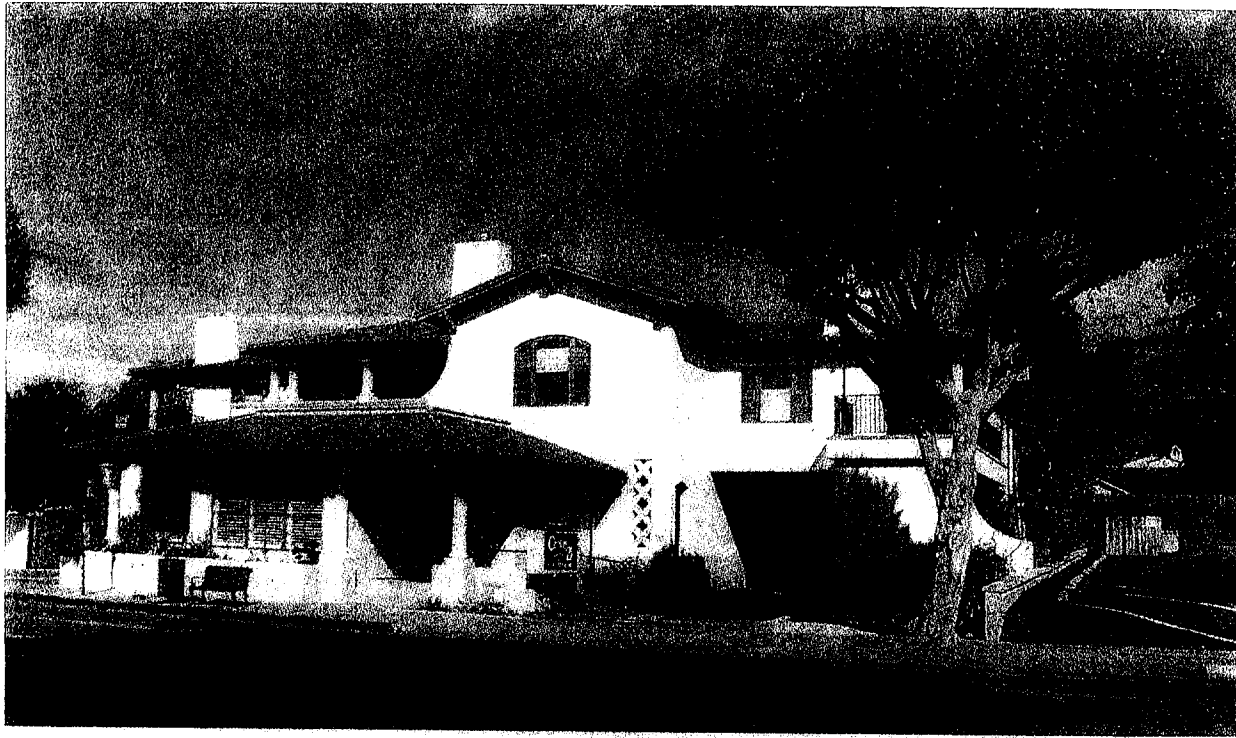
# Local

## SANTA BARBARA COUNTY NEWS

SANTA BARBARA NEWS-PRESS

LOCAL

SATURDAY, NOVEMBER 4, 2006



MICHAEL MORIATIS / NEWS-PRESS

A proposed condo conversion in the 3400 block of State Street was rejected by the Planning Commission. Owners wanted to convert four two-bedroom apartments into condominiums for sale. Local housing advocates accused developers of taking advantage of a loophole in city review processes.

### Lost records, bad measurements raise questions

By VLADIMIR KOGAN  
NEWS PRESS STAFF WRITER

Less than a week after the Santa Barbara City Council moved to tighten rules governing condominium conversions, the city Planning Commission moved to reject a project critics describe as a case study on how developers exploit loopholes in local laws for profit.

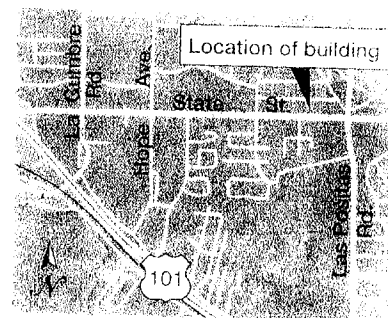
Jim Kahan, a former city attorney and president of the Allied Neighborhood Association, who led the charge against the proposed condo conversion in the 3400 block of State Street, called Thursday's vote by the Planning Commission momentous.

"This was about the future of upper State Street," he said.

Other local activists portrayed the rejection of the project as a symbolic line in the sand.

Despite the controversy surrounding the meeting, the development under consideration was relatively small, involving the conversion of four two-bedroom apartments into condominiums for sale. But the facts surrounding the project were unusual.

The owners of the two-story, mixed-use building, local real estate agents Robert and Deborah Hart, applied for the condo conversion in September 2005 — just three weeks after they received permits from the city to add a second floor to their single-story real estate office, creating four apartments. Local housing advocate Mickey Flacks said the sequence of events represented the quintessential "two-step flip": A process by which developers escape more onerous city review by first building apartments, and then converting them to for-sale units shortly afterward.



TOM DE WALT / NEWS-PRESS

Exh 12 page 1 of 2

Condo conversion case fraught with irregularities

Because the construction of new condos often requires land-use changes, apartment projects generally secure approval with relative ease and fewer procedural requirements.

"If the apartments are allowed to be condo-ized in this evasion of the law, the problem (of inadequate rental stock) will get even worse," Ms. Flacks told the Planning Commission.

For their part, city staff, who initially gave their go-ahead to the project, agree that the proposed conversion made use of the unusual process. However, they argued that staff and the Planning Commission had little choice but to approve it anyway, until the City Council rewrote the ordinance regulating condo conversions.

Though the Harts did not appear before the commission, their land-use consultant, David Tabor, suggested that they had been misled by a local insurance agent, who suggested they could save money on insurance costs by receiving building permits for apartments before converting them to condos.

"The applicant has been the victim of bad advice by an insurance adviser; their intention has always been to build condos," Mr. Tabor said. "This project has stepped up and tried to be a good citizen and meet all of the city's requirements."

In addition to the timing of the conversion, which raised eyebrows from the commissioners, the hearing also revealed some unusual details surrounding how the city handled the project. For example, the city admitted it "purged" all of the records relating to the design review of the original building addition in February, nearly a month after Mr. Kahan

filed a California Public Records Act request for the documents. City staff also acknowledge that they can't find the original project's environmental review and say they issued building permits for the remodel even though the expansion encroached into the mandatory setbacks. Such encroachment normally requires a modification from the Planning Commission.

The city's planners came out looking especially red-faced Thursday when Mr. Kahan and Planning Commissioner Bill Mahan pointed out that the official area measurements, included in the applications, were incorrect and did not include several major parts of the building; with the

correct area, the project would no longer qualify for a special exemption that allows mixed-used projects to provide fewer parking spaces than required by law, an exemption Mr. Tabor had requested from the city.

All of the unusual circumstances were too fishy to be coincidental, Mr. Kahan claimed.

"This does not pass the smell test," he told the commission, arguing that approving the project would afford the developer special treatment. "I think, by God, we agree that people who violate the law, both the letter and the spirit, should not be rewarded. And that's what would happen if you approve the condos."

Mr. Tabor, who is also a former city employee, accused Mr. Kahan of defamation of character and said his clients were surprised by the flurry of allegations Mr. Kahan first made just days before the hearing.

"I just think a disservice is being done by the ambush of the process," he said.

Faced with the revelations over the size of the project, the city's own attorney advised the Planning Commission that it could not vote to approve the development. But instead of simply granting a continuance to let Mr. Tabor modify the application, the seven-member board voted unanimously to deny it outright.

"I think approval of this project ... would be wrong," Commissioner Charmaine Jacobs said. "It would be wrong for upper State Street. And it would be wrong for procedural precedent."

Mr. Tabor said he expects his clients to appeal the decision to the City Council.

*e-mail: vkogan@newspress.com*

*"This project has stepped up and tried to be a good citizen and meet all of the city's requirements."*

**David Tabor,**

land-use consultant to owners of property in question

*"If the apartments are allowed to be condo-ized in this evasion of the law, the problem (of inadequate rental stock) will get even worse."*

**Mickey Flacks,** local housing advocate

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February 13, 2007

Mr. Paul Casey  
Community Development Department  
P.O. Box 1990  
Santa Barbara, CA 93102-1990

ALSO TRANSMITTED BY E-MAIL TO [Pcasey@SantaBarbaraCA.gov](mailto:Pcasey@SantaBarbaraCA.gov)

Re: Century 21 (3408 & 3412 State Street), Objection to continuance and requests for dismissal of appeal and enforcement

Dear Mr. Casey:

The Applicants attempted a **TWO-STEP FLIP** maneuver (obtaining an approval as apartments with lesser parking requirements and other land use restrictions and then attempting a conversion to more restrictive condominiums). The requested approvals would have removed affordable rental housing from the market. Their attempted maneuver has been a failure and was rejected unanimously by the Planning Commission. Their appeal has no merit.

To make the record clearer, I:

- (1) again object to any continuance of the Applicants' bogus appeal,
- (2) make a request that the City Council dismiss their bogus, delaying appeal, and
- (3) request that the City take enforcement action to end the numerous violations.

Revocation, cancellation or rescission of the Certificate of Occupancy would seem to be a most reasonable enforcement approach for this project.

The construction and landscaping for the project do not comply with the "approved plans" for the apartments. I do not understand why a certificate of occupancy was ever issued in violation of the "approved plans." Therefore, I suggest that the certificate of occupancy be revoked, cancelled or rescinded.

I do not know if the so-called "approved plans" are consistent with the actual plans approved by the ABR. (At least one ABR member said that the actual construction is not consistent with what was approved by the ABR.) However, that will be very difficult, if not impossible, to check because the ABR records were destroyed while I had an outstanding request for them pursuant to the Public Records Act. Moreover, their destruction was inconsistent with the City Resolution on Records Maintenance, Retention and Destruction

**1. OBJECTION TO CONTINUANCE**

I object to any further continuance of the Century 21 appeal, especially without written

**|NEWS|**  
feature

# DANCING AROUND A TWO-STEP FLIP

Condo Conversion Given the Boot

by Nick Welsh

NOVEMBER 9, 2006 THE INDEPENDENT 21

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*Planning Commission: Bill Mahan makes a point to immerse himself in the fine details. When he brings out the pencil, watch out.*

**B**ill Mahan may speak softly, but he wields a big red pencil. Just ask developer Bob Hart, who until last Thursday had dreams of converting the four two-bedroom rentals on top of an office building he owns in the 3400 block of State Street into condominiums. That's when Mahan — an eight-year veteran of the Santa Barbara City Planning Commission and an architect by profession — went to work. Pulling out his fabled red pencil, Mahan did some quick and dirty calculations that turned Hart's dreams, then before the commission on appeal, into a nightmare. The results of Mahan's math have been plenty embarrassing to city planners as well. Had they done the same calculations as Mahan, perhaps they might have caught

a small but lethal glitch in Hart's plans much sooner.

Mahan discovered that Hart's proposed condos did not qualify for the crucial break in parking requirements that city planners had said they had. And while the numbers are not large — eight required spaces rather than the four proposed — their financial implications for Hart are huge. His project — a modest mixed-use combination of office space and apartments — is already built and there's no room to spare on the ground for four additional parking spaces. As Mahan said afterward, his discovery proved "a bullet between the eyes" for Hart's specific proposal. But for real estate investors eager to capitalize on Santa Barbara's stratospheric housing prices by converting otherwise modest rental properties into more lucrative condominiums

through a maneuver known around City Hall as "the two-step flip," it was, as Mahan said, "a shot into the hull."

The two-step flip is a dodge used by developers to avoid some of the risks of regulatory oversight and discretionary review involved with condominium conversion; it's also a method savvy property owners use to escape the exorbitant insurance costs associated with condominium development until recently. Here's the way it works: property owners apply for permits to build apartments first, and then they turn around and seek permission to convert the apartments to condominiums. Thus far, city planners have been able to document 13 instances of the two-step flip — involving a total of 43 units — since 2002. In some cases, the flip occurs two years after construction. But in Hart's case, the >>>



**[The two-step flip] practice is perfectly legal. Nonetheless, it doesn't sit well with a Planning Commission increasingly exasperated over its limited ability to stem the loss of rental housing.**

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initial request for condo conversion arrived at City Hall just three weeks after Hart had obtained his building permits. As Mahan stressed, this practice is perfectly legal. Nonetheless, it doesn't sit well with a Planning Commission increasingly exasperated over its limited ability to stem the loss of rental housing.

Just two days before the Planning Commission's deliberations last week, members of the Santa Barbara City Council had expressed grave concern about gentrification and the loss of modestly priced rental housing. The two-step flip was specifically lambasted by name, and housing advocates urged that the practice be severely limited or stopped altogether. The most obvious solution is to impose a time restriction on the flip. And until 1992, City Hall did just that, requiring a five-year waiting period before allowing a new apartment to be eligible for condo conversion.

Adding fuel to the Planning Commission's fire, earlier this year the City Council put a controversial mixed-use housing project slated for upper State Street on indefinite ice at the insistence of angry neighbors concerned that their piece of paradise had become a traffic hellhole. Until the council adopts a master plan for upper State Street acceptable to the community, any project that fails to provide the full number of parking spaces is likely to get a very cool reception. Given this sudden sea change now being proposed within city hall, Bob Hart was as much a victim of bad timing as he was of Mahan's red pencil.

But the pencil definitely hurt. For Hart's mixed-use project to qualify for the break on parking requirements, the square footage dedicated to residential use could not exceed that of his commercial space, according to city land use rules. Back in

2002, when Hart's project first went before the city's Architectural Board of Review, that was the case. It was also the case when Hart was granted his building permit in September 2004. But when Hart's project went before the Planning Commission last week, the numbers weren't so clear. No one had added up the square footage of the four condos and compared that sum with the square footage of the downstairs commercial space. "It just looked close to me," Mahan said. When he added them up, he discovered that the condos took up 43 square feet more than the commercial space. While that was admittedly tiny, it was sufficient for Mahan and the rest of the Planning Commission to deny the condo conversion and uphold the appeal filed by neighborhood activist and City Hall watchdog Jim Kahan of the Allied Neighborhood Committee. "This was a dead duck," Mahan said.

At Thursday's meeting, Kahan — given to bluster and detailed diatribes that try the patience of many city planners — ascribed less than pure motives to the planners who reviewed Hart's proposal and endorsed it. He complained that city staff missed many irregularities and transgressions by Hart — involving acoustic studies, storage shortages, setback violations, and landscaping omissions — and concluded, "It doesn't smell good." Mahan acknowledged that errors were made but isn't comfortable with Kahan's approach. "I'm not into this conspiracy thing," he said. "Accidents happen. We have thousands of projects and our staff is overworked."

City planner Betty Weiss is still trying to figure out where the numbers changed and how Hart found himself on the wrong side of the parking requirement equa-

tion. Because many of the planning documents have been destroyed since Hart first got his building permit, it may be difficult recreating the necessary paper trail. Hart was out of town for his mother's birthday party and was represented by land use agent and former city planner Dave Tabor. Tabor complained he was given only 15 minutes to make his case, and that he'd been "ambushed" by Kahan, who delivered an expanded critique just two days prior to the meeting. Tabor said he and Hart plan to appeal the Planning Commission's decision to the City Council. As to Mahan's calculations, he said, "The numbers on the plan are the same numbers we worked out with city staff. They haven't changed. The only thing that might have changed is how they're interpreted." Tabor dismissed many of the complaints leveled by Kahan as "red herrings," saying his client had been victimized by the political equivalent of a perfect storm. "They're trying to balance the broken housing market on the back of this one project," Tabor said.

In the meantime, Mahan has just one month left on the Planning Commission. Most likely, he'll be replaced by the time Hart's appeal goes before the City Council, or the Planning Commission takes up the inevitable debate over the two-step flip. While expressing sympathy for Hart's predicament, he also expressed satisfaction at making the equivalent of a shoestring tackle involving a project he said is so fraught with problems it should have been demolished from the get-go. When asked what prompted him to put pencil to paper last week, Mahan laughed, and said, "You've heard of the luck of the Irish? Well, I'm Irish. I guess I was just lucky."

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justification or even a written request. I was advised on the morning of February 12 by Susan Tschech of the City Clerk's Office that the hearing was being continued from February 27 at 6:00 pm to the afternoon of March 27. On the afternoon of February 12, I received a telephone call from Kathleen Kennedy and she asked me if I would be available on April 24 for the hearing. (April 24<sup>th</sup> is the fourth hearing date and would be approximately 6 months after the Planning Commission action.) I asked her why and she said that the Applicants' attorney needed some more time. I asked if the City had a written request and she said the City only had an e-mail confirming the April 24 date. (I e-mailed you a copy on February 12 and a copy is enclosed.)

### 1.A BACKGROUND

In December 2006, I was advised that the hearing would be on January 23. Price, Postel and Parma, the largest law firm in Santa Barbara, represented and represents the Applicants. In December 2006 or early January, Price, Postel and Parma requested a continuance because it needed more time. (I assume that Price, Postel and Parma helped with the appeal letter and has been on board since at least early November.) The January appeal hearing was rescheduled for February 27 which would have been approximately 4 months after the Planning Commission granted my appeal.

As you recall, your Department objected when I made a request for a continuance because I had a severe case of conjunctivitis. At that time, I could not read or even comfortably see which would have prevented me from making a reasonable presentation. My appeal to the Planning Commission was originally scheduled for October 5. But at the last minute, your Department continued my appeal to October 12. In the meantime, I came down with an aggressive case of conjunctivitis and asked your Department to continue the hearing until at least November 2 by which date I hoped to recover.

Your Department refused to accommodate my reasonable, medical request. (On February 12, I e-mailed you a copy of one of medical requests and a copy is attached.) Your Department's e-mail refusing to go along with my reasonable request stated **"WE MUST BE FAIR TO ALL PARTIES INVOLVED."**

I was forced to make a formal request of the Planning Commission on October 5 which I did by both e-mail and a personal appearance. (On February 12, I e-mailed you a copy of that request which is attached hereto.) It was very difficult for me to see on October 5 and the lights at City Hall were very unpleasant for my eyes. Fortunately, the Planning Commission granted my request over your Department's objections and I had mostly recovered by the November 2 Planning Commission hearing.

I have already notified many people of the February 27 hearing and I had already started to give notice of the March 27 date. I stress that I am not the only person who is being inconvenienced by these repeated continuances.

### **1B. CONTINUANCE SHOULD NOT BE GRANTED**

I request that **YOU BE FAIR** to the Appellant and others who are interested in supporting the unanimous decision of the Planning Commission. I have not objected nor do I object to a reasonable continuance. All of the Applicants' requests for continuances have been verbal. I have neither heard nor seen any justification other than this large law firm needed more time to prepare. I would think that with the number of attorneys in that firm that it would have been possible to find somebody who had the time. I suggest that you obtain reasons for continuance requests and that those requests be in writing.

### **2. BOGUS APPEAL SHOULD BE DISMISSED**

On July 19, 2006, the Staff Hearing Officer gave approval to the Appellants requests for (1) a zoning modification to allow an exception to the requirement of the SD-2 zone setback along State Street, (2) a permit for a condominium conversion and (3) a Tentative Subdivision Map for the condominium conversion. I appealed that decision for many reasons. On November 2, the Planning Commission unanimously upheld my appeal for numerous reasons. Among the many deficiencies were failure to comply with the Zoning Ordinance (parking and setback) and Code requirements for a condominium conversion and approval of a Tentative Subdivision Map.

On November 13, the Applicant filed an appeal. This appeal letter gave no reasons for the appeal and stated "Following my review of the Planning Commission Resolution, I will submit more directed written information." On January 11, 2007, the Planning Commission adopted the Resolution (No. 045-06) approving my appeal and denying the project. The Applicant has not yet submitted its reasons for the appeal.

I do not believe that there are any valid reasons to overturn the unanimous action of the Planning Commission, especially because of the relatively high visibility of this project and importance of adequate setbacks and height limitations on State Street. In light of the Applicants' failure to submit any reasons for its appeal for more than three months, this appeal should be dismissed.

### **3. ENFORCEMENT OF LAW**

I believe that the City should enforce the law for this project. On December 28, 2005, the City issued a certificate of occupancy for this apartment/office project despite the fact that it contains numerous violations. [Some of these violations were even recognized by the Staff Hearing Officer's conditions of approval on July 19, 2006 (Resolution No. 042-06).] However, I am not aware of any enforcement measures taken against these violations. On February 8, I asked Assistant City Attorney Scott Vincent about the lack of enforcement and he said that I should contact Danny Kato. I am writing this letter in response to his suggestion and I assume that you will refer enforcement to the appropriate individual. As I recall, we discussed the lack of

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enforcement in this matter.

It seems to me that revocation, cancellation or rescission of the Certificate of Occupancy would seem reasonable for this project.

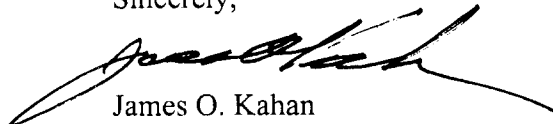
#### 4. CONCLUSION

There is no merit to this appeal. The Applicants have no incentive to act because the City is not enforcing the law in relation to existing violations. It is my belief that if your Department started enforcing the law that the Applicants would stop delaying.

It has always been my belief that it is the mission of your Department to support the Planning Commission. I am trying to support the Planning Commission's action, but I have not been receiving much help from your Department. I hope that you can appreciate why I have the belief that your Department is trying to reverse the Planning Commission's unanimous decision.

Moreover, I am disturbed that your Department is meeting with the Applicants to help them. This help seems inconsistent with your Department's mission to support the Planning Commission. Please give me an explanation of your objective and enforcement efforts pertaining to the violations at the referenced project.

Sincerely,



James O. Kahan

Enclosures:

xc: Mayor Marty Blum, City Administrator James Armstrong, Planning Commission Chair  
Charmaine Jacobs, City Attorney Steve Wiley, Cynthia Rodriguez

JK:ac